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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1977

No. 77-1181

Department of Human Resources (formerly State Department of Public Welfare) of the State of Texas,

Petitioner

v.

Joseph A. Califano, Jr., Secretary of Health, Education and Welfare, and Michael Blumenthal, Secretary of the Treasury,

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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Joseph A. Califano, Jr.,
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Michael Blumenthal,
Secretary of the Treasury

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

The petitioner, the Department of Human Resources of the State of Texas (formerly the State Department of Public Welfare of the State of Texas), respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit, entered in this proceeding on July 25, 1977, as to which petition for rehearing was denied on September 23, 1977.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit, reported at 556 F.2d 326, appears at Appendix A, infra, pp. 1-a4. The opinion of the United States District Court for the Western District of Texas is

reported at 388 F.Supp. 1304 and is included herein in Appendix A, infra, pp. 15-25.

JURISDICTION

The judgment of the Court of Appeals for the Fifth Circuit was entered on July 25, 1977. A timely petition for rehearing was denied on September 23, 1977. On the 19th day of December, 1977, Associate Justice Lewis H. Powell, Jr. signed an order extending the time for filing of this petition for writ of certiorari to and including February 20, 1978. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. Whether the United States Court of Appeals should have applied the provisions of 42 U.S.C. 1316(a)(1) and (2), the procedure for determination by the Secretary of HEW as to conformity of State plans submitted by a State to the Secretary for approval under the Social Security Act, to the facts of this case rather than the provisions of 42 U.S.C. 304, 604, 1204, 1354 and 1316(a)(3), the procedure applicable when a State fails to substantially comply with provisions to its State Plan, already approved, in the administration of said State Plan.

2. Whether the Secretary of HEW should be required, under the Social Security Act, to process and pay, forthwith, the disputed $92,731,245.00 social services claim of the Department of Human Resources.

3. Whether the Court of Appeals erred by failing to find that the District Court had subject matter jurisdiction to declare the "Twiname Memorandum", an HEW memorandum allegedly interpreting regulations applicable to the Texas claim herein, null and void and

to restrain its application to the Texas claim.

STATUTORY AND REGULATORY PROVISIONS INVOLVED

This case involves interpretation and application of the Social Security Act, 49 Stat. 620, Titles I, IV, X, and XIV, as amended, 42 U.S.C. 301-304, 601-604, 1201-1204, 1351-1354, and 1316 and 45 C.F.R. Part 201, 213, 220, 222, and 226. These statutory and regulatory provisions are attached hereto as Appendix C.

STATEMENT OF THE CASE

On July 1, 1971, the Department of Human Resources, then denominated the State Department of Public Welfare and hereinafter referred to as such in this Statement, amended its state plan for social services in order to obtain federal financial participation (matching funds) for purchase of social services from other state agencies. These plan amendments were approved in mid-August, 1971, by the Regional Commissioner of the Social and Rehabilitation Service of HEW. (See Appendix D.)

Shortly after the new plan for purchase of social services went into operation, the Associate Regional Commissioner of Social and Rehabilitation Service advised Raymond Vowell, Commissioner of DPW, that DPW could use *only* funds appropriated to DPW by legislative act for state matching funds in the purchase of social services from other state agencies. In June of 1972, some nine months later, HEW advised DPW that this prior advice was not in keeping with the current national position of obtaining federal financial participation by use of appropriations from other state agencies for the state match. DPW then made a claim for federal financial participation in the purchase of services from other state agencies during the fourth quarter of Federal Fiscal Year 1972 and a retroactive

claim, eventually amounting to $92,731,245.00, for the three prior quarters of Fiscal Year 1972.

HEW approved the claim for the fourth quarter of Fiscal Year 1972 and paid it, although that payment is now the subject of litigation in another suit in the United States District Court for the Western District of Texas. HEW delayed approval of and then withheld the $92,731,245.00, characterizing its action as a "disallowance". The reason given for HEW's action was that DPW had failed to comply with criteria contained in a HEW memorandum, dated December 20, 1972, known as the "Twiname Memorandum", which was ostensibly an interpretation of federal regulations incorporated in the Texas State Plan. (See Appendix D.) The stated reasons for denial of the Texas claim were contained in a letter dated January 19, 1973 from Clarence Lambright, Regional Commissioner of HEW's Social and Rehabilitation Service. (See Appendix D.)

Because the decision of HEW was characterized as a "disallowance", Department of Public Welfare officials requested reconsideration of the decision under 42 U.S.C. 1316 and/or any other administrative relief available, including a compliance hearing under 42 U.S.C. 304, 604, 1204, and 1354. The Secretary of HEW treated the matter as a "disallowance" and concurred in the decision of the Regional Commissioner after "reconsideration" under 42 U.S.C. 1316(d). The treatment of the matter as a disallowance lead to denial to Texas of prior notice, hearing and judicial review. HEW contended that the Secretary's decision upon reconsideration was final.

The State Department of Public Welfare brought suit in the United States District Court for the Western District of Texas, seeking declaratory and injunctive relief and a writ of mandamus. DPW sought to enjoin the withholding of the $92.7 million claim. Jurisdiction

was alleged under 28 U.S.C. 1331, 1361, 2201 and 5 U.S.C. 701 and 706.

After a hearing on a motion to dismiss filed by HEW, the district court declined to dismiss the portion of the plaintiff's first amended complaint requesting that the court direct the Secretary to provide notice and the opportunity for an administrative hearing pursuant to 42 U.S.C. 304, 604, 1204 and 1354, prior to withholding the funds claimed. All other portions of the first amended complaint were dismissed for lack of subject matter jurisdiction. The district court noted that the only possible jurisdiction in the District Court rested upon the Administrative Procedure Act, 5 U.S.C., Sec. 701 et seq., the mandamus statute, 28 U.S.C. 1361, and the Declaratory Judgment Act, 28 U.S.C. 2201.

On February 12, 1975, the District Court decided that the Secretary of HEW was under a mandatory obligation to provide DPW with reasonable notice and opportunity for hearing under 42 U.S.C. 304, 604, 1204, and 1354. In reaching this decision, the Court determined that the issue which was the basis for the withholding of funds in this instance was a compliance issue, based upon an alleged failure to comply substantially with the Texas State Plan. The Court, basing its action upon mandamus jurisdiction, ordered the Secretary of HEW to provide reasonable notice and opportunity for hearing as provided in 42 U.S.C. 304, 604, 1204 and 1354, relative to the withholding of the $92.7 million claimed by DPW. The district court further decided that the failure of the Secretary of HEW to afford reasonable notice and the opportunity for hearing prior to the withholding of said funds was unlawful and in violation of 42 U.S.C 304, 604, 1204 and 1354. The Court, however, refused to order the Secretary of HEW to pay DPW the $92.7 million claim forthwith. *State Department of Public Welfare v.*

Weinberger, 388 F.Supp. 1304 (W.D. Tex. 1975). (See Appendix A.)

The decision of the district court was appealed by both parties. DPW contended that the district court had erred by failing to require an immediate payment of the $92.7 million and by failing to find subject matter jurisdiction to declare the "Twiname Memorandum" of December 20, 1972 null and void and restrain its application to the Texas claim. HEW urged that the district court erred in requiring a compliance hearing under 42 U.S.C. 304, 604, 1204 and 1354 and urged, once again, that the matter be handled under the provisions of 42 U.S.C. 1316(d) and 45 C.F.R. 201.14, as a "disallowance".

The Court of Appeals agreed with the result of the district court opinion in ordering a full administrative hearing but based its decision upon different statutory provisions. It also agreed with the result of the district court in declining to order immediate payment of the Texas $92.7 million claim. It failed to address the issue of the alleged lack of subject matter jurisdiction in the district court to declare the "Twiname Memorandum" null and void and restrain its application to the Texas claim. *State Department of Public Welfare of the State of Texas v. Califano*, 556 F.2d 326 (5th Cir., 1977).

The Court of Appeals found that DPW had submitted a state plan for provision of social services in 1971 and that this plan was approved by HEW and became effective on July 1, 1971. The court stated:

> "State plans which are in operation are scrutinized by HEW to ensure continuing compliance with the requirements of sections 302, 602, 1202 and 1352, and that no 'prohibited requirements' are imposed by the state under the plans. 42 U.S.C. §§ 304, 604, 1204 and 1354. When it appears to the Secretary that the state plan is being operated in

> noncompliance with these regulations, he must give the state agency 'reasonable notice and opportunity for hearing' to evaluate the operation of the plan. States dissatisfied with the outcome of such compliance hearings may petition for direct review in the Court of Appeals. 42 U.S.C. §§ 304, 604, 1204, 1354, 1316(a)(3)." *State Department of Public Welfare of the State of Texas v. Califano*, supra., at pp. 329-330.

The Court of Appeals found that the record revealed that "HEW's reasons for denying the Texas DPW claim amount to a finding of nonconformity with Texas DPW's approved plan and with federal requirements". *State Department of Public Welfare of the State of Texas v. Califano*, supra., at pp. 330-331. In spite of this finding, the Court of Appeals based its decision on the provisions of 42 U.S.C. 1316(a)(1), (2) and (3) in requiring a hearing and judicial review in this case rather than on the requirements of 42 U.S.C. 304, 604, 1204, 1354. In doing so, the Court of Appeals noted " . . . section 1316(a) provisions do not require payment of the claim to Texas pending review". *State Department of Public Welfare of the State of Texas v. Califano*, supra., at p. 332.

The Court of Appeals rejected HEW's contention that its handling of the claim was a "disallowance", which could only be reconsidered pursuant to 42 U.S.C. 1316(d), noting that the state deserved to be put on a more equal basis in this instance and that disallowance procedures must be implemented by means of audit exceptions. 45 C.F.R. 201.13(a), *State Department of Public Welfare of the State of Texas v. Califano*, supra., at p. 332 and footnote 3, p. 329.

The conclusion of the Court of Appeals is best summarized by the following statement from its opinion:

"After reviewing the Act, the statutory history, and the circumstances of the claim, we have determined that the purposes of the Act and the equities are best served by treating this case as a plan—conformity dispute under section 1316(a), and returning the case to HEW for reconsideration in a formal hearing under that section." *State Department of Public Welfare of the State of Texas v. Califano*, supra., at p. 330.

REASONS FOR GRANTING THE WRIT

1. This case is a case of first impression involving significant questions of construction of the Social Security Act. The resolution of these questions will be important in the future administration of the Social Security Act and may have an impact on the processing of billions of dollars in federal funds. It is important that The Supreme Court resolve the question of how congress intended that the portions of the Social Security Act applicable to this lawsuit should be applied.

2. This case arises out of a controversy which involves numerous lawsuits and a dispute between at least 28 states and HEW involving nearly $3 billion. It is extremely important that the legal issues involved herein be resolved correctly by the Supreme Court. This case will establish correct administrative procedures for the processing of the $92.7 million unpaid claim of the State Department of Public Welfare, as well as the $34.8 million in federal funds already paid to and spent by the State of Texas. The final decision in this case will also serve as precedent in the numerous lawsuits now pending in the lower courts which involve the same or similar issues related to processing and handling of state claims for matching funds in the social services program.

3. By failing to require HEW to carry out the mandate of 42 U.S.C. 304, 604, 1204 and 1354, the Court of Appeals denied the State Department of Public Welfare full and immediate payment of an extremely large claim for federal funds to which DPW claims entitlement. The Court of Appeals erred when it applied the provisions of 42 U.S.C. 1316(a)(1), (2) and (3) to the facts which were established by the evidence in this case. As the Court's opinion concluded, the State Department of Public Welfare's state plan was *approved* by HEW on July 1, 1971, pursuant to 42 U.S.C. 1316(a)(1). Therefore, there was no dissatisfaction with that decision and no possible ground for application of 42 U.S.C. 1316(a)(2) and (3). The decision of the Court of Appeals, if left to stand, will lead to confusion and error in the administration of the Social Security Act among HEW and each of the 50 states.

4. This case involves serious jurisdictional issues which the Court of Appeals failed to address. The jurisdiction of a United States District Court to restrain and enjoin the application of criteria and regulations illegally promulgated by a federal agency is necessary and appropriate under 28 U.S.C. 1331(a) and 5 U.S.C. 701 and 706. The Supreme Court needs to clarify the scope of such jurisdiction and resolve any questions which may exist in this regard. *State Highway Commission v. Volpe*, 479 F.2d 1099 (8th Cir. 1973); *National Welfare Rights Organization v. Weinberger*, 377 F. Supp. 861 (D. D.C. 1974); *People Ex Rel Bakalis v. Weinberger*, 368 F. Supp. 721 (N.D. Ill. 1973); *Barber v. Collins*, 397 U.S. 159 (1970); *Preserve Overton Park v. Volpe*, 401 U.S. 402 (1971); *Ass'n of Data Processing Service Organization v. Camp*, 397 U.S. 150 (1970); *National Helium Corporation v. Morton*, 455 F.2d 650 (10th Cir. 1971).

CONCLUSION

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the United States Court of Appeals for the Fifth Circuit.

Respectfully submitted,

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PROOF OF SERVICE

I, Frank C. Cooksey, Acting as Special Assistant Attorney General of Texas, do hereby certify that 3 copies of the foregoing Petition for Writ of Certiorari, being five (5) volumes, have been served on Respondents by placing same in the United States Mail, Certified, postage prepaid, addressed as follows: Honorable Wade H. McCree, Jr., Solicitor General of the United States, Constitution Avenue between 9th and 10th Sts., N. W., Washington, D.C. 20530, and to Mr. Robert S. Greenspan, Attorney, Department of Justice, Civil Division, Appellate Section, Constitution Avenue between 9th and 10th Sts., N. W., Washington, D.C. 20530, on the _____, day of February, 1978.

FRANK C. COOKSEY

Supreme Court, U. S.
FILED
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APPENDIX A

IN THE

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Department of Human Resources (formerly State Department of Public Welfare) of the State of Texas,

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APPENDIX A

STATE DEPARTMENT OF PUBLIC WELFARE OF the STATE OF TEXAS et al., Plaintiffs-Appellees-Cross Appellants,

v.

Joseph A. CALIFANO, Jr., Secretary of Health, Education and Welfare, et al., Defendants-Appellants-Cross Appellees.

No. 75-1953

United States Court of Appeals,
Fifth Circuit.

July 25, 1977.

Rehearing and Rehearing En Banc Denied
September 23, 1977.

Texas Department of Public Welfare brought action contesting refusal of Department of Health, Education and Welfare to pay claim for $92,000,000 in matching funds under public assistance provisions of Social Security Act. The United States District Court for the Western District of Texas, Jack Roberts, J., 388 F.Supp. 1304, ordered HEW to conduct a full administrative hearing to reconsider its refusal but found that the court lacked jurisdiction to order the agency to pay the amount in dispute pending outcome of reconsideration, and appeal was taken. The Court of Appeals, Ainsworth, Circuit Judge, held that case was to be treated as a "plan-conformity dispute" subject to reconsideration in a formal hearing, rather than a matter of mere "disallowance" not subject to hearing or judicial review, since reasons for denying claim amounted to a finding of nonconformity with previous approved state plan of assistance and with

federal requirements but that payment of claim was not required pending review.

Affirmed in part; modified in part.

1. Social Security and Public Welfare — 8.5

Denial of claim by Texas State Department of Public Welfare for $92,000,000 in matching funds under Social Security Act was to be treated as a "plan-conformity dispute" subject to a full administrative hearing, rather than a mere "disallowance" not subject to a formal hearing, where reason for denying claim amounted to finding of nonconformity with previously approved state plan and with federal requirements; however, payment of claim was not required pending reconsideration. Social Security Act, §§ 1 et seq., 3(b)(1, 2), 403(b), 1003(b), 1116(a, b, d), 1403(b), 42 U.S.C.A. §§ 301 et seq., 303(b)(1, 2), 603(b), 1203(b), 1316(a, b, d), 1353(b).

See publication Words and Phrases for other judicial constructions and definitions.

2. Social Security and Public Welfare — 8.20

Major reasons for providing judicial review of Department of Health, Education and Welfare decisions concerning state public service plans was to put the state on a more equal basis with the federal government in administration of public assistance programs, thereby reducing intergovernmental friction. Social Security Act, § 1116(a), 42 U.S.C.A. § 1316(a).

John E. Clark, U.S. Atty., San Antonio, Tex., Robert E. Kopp, Michael H. Stein, Rex E. Lee, Asst. Atty. Gen., Dept. of Justice, Civ. Div., Appellate Section, Washington D.C., for Joseph A. Califano, Jr., et al.

John L. Hill, Atty. Gen., Frank C. Cooksey, Asst. Atty. Gen., David M. Kendall, Jr., First Asst. Atty. Gen., Austin, Texas, for Dept. of Public Welfare et al.

Appeals from the United States District Court for the Western District of Texas.

Before AINSWORTH and MORGAN, Circuit Judges, and LYNNE*, District Judge.

AINSWORTH, Circuit Judge:

This action arose when the United States Department of Health, Education, and Welfare refused to pay a Texas State Department of Public Welfare claim for $92 million in matching funds under provisions of the Social Security Act, 42 U.S.C. § 301 *et seq.* Texas Department of Public Welfare brought this action in the district court contesting HEW's refusal to pay its claim. The district court ordered HEW to conduct a full administrative hearing to reconsider its refusal to pay, but found that it lacked jurisdiction to order HEW to pay Texas the claimed $92 million pending the outcome of reconsideration. We agree with the district court that the dispute should be returned to HEW for a full administrative hearing, and decline to order payment to Texas pending the outcome. Our reasons differ somewhat from those relied upon by the district court.

Congress has made available under the Social Security Act matching funds to the states for public assistance programs operated in compliance with federal requirements. *See, e. g.*, 42 U.S.C. §§ 301, 601, 1201, 1351. In order to qualify for the matching funds each state must obtain HEW approval of a statewide

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*Senior District Judge of the Northern District of Alabama, sitting by designation.

plan for furnishing appropriate services,[1] and must designate a single state agency to administer the plan. *See* 42 U.S.C. §§ 302, 602, 1202, 1352; 45 C.F.R. §§ 201.2 to 201.7. The Secretary of HEW reviews the proposed plans to determine whether they conform with federal requirements. *See e.g.*, 42 U.S.C. §§ 302, 602, 1202, 1352; 45 C.F.R. §§ 201.2, 201.3. The Secretary must approve plans which conform with these requirements. If the Secretary finds that the plan does not conform to federal requirements, and refuses approval, the affected may request a plan-conformity approval, the affected state may request a plan-conformity hearing pursuant to 42 U.S.C. § 1316(a); *see* 45 C.F.R. § 201.4 Section 1316(a) provides for a hearing within certain time limits.[2] Following the hearing the Secretary's

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1 42 U.S.C. § 301 provides in pertinent part: Authorization of appropriations

> The sums made available under this section shall be used for making payments to States which have submitted, and had approved by the Secretary of Health, Education, and Welfare (hereinafter referred to as the "Secretary"), State plans for old-age assistance, or for medical assistance for the aged, or for old-age assistance and medical assistance for the aged.

Sections 601, 1201 and 1351 are substantially similar except that they provide for assistance to, respectively, dependent children, the blind and the disabled. This pattern of corresponding section numbers is maintained throughout the statute.

2 42 U.S.C. § 1316(a) provides in pertinent part:

> (a)(1) Whenever a State plan is submitted to the Secretary by a State for approval under subchapter 1 [the aged], . . . X [the blind], XIV [the disabled] . . . of this chapter, or part A of subchapter IV of this chapter [dependent children, he shall, not later than 90 days after the date the plan is submitted to him, make a determination as to whether it conforms to the requirements for approval under such subchapter. The 90-day period provided herein may be extended by written agreement of the Secretary and the affected State.

(continued on next page)

determination is directly reviewable in the court of appeals, 42 U.S.C. § 1316(a)(3).

In 1971, the Texas Department of Public Welfare [DPW] submitted to HEW a public service plan pursuant to the provisions of the Act under titles I (the aged, 42 U.S.C. § 301 *et seq.)*, IV (dependent children,42 U.S.C. § 601 *et seq.)*, X (the blind, 42 U.S.C. § 1201 *et seq.)*, and XIV (the disabled, 42 U.S.C. § 1351 *et seq.)*. The plan was approved and became effective on July 1, 1971.

The federal share of the state's expenditures under a public service plan is computed quarterly by HEW in the following manner:

> (2) Any State dissatisfied with a determination of the Secretary under paragraph (1) with respect to any plan may, within 60 days after it has been notified of such determination, file a petition with the Secretary for reconsideration of the issue of whether such plan conforms to the requirements for approval under such subchapter. Within 30 days after receipt of such a petition, the Secretary shall notify the State of the time and place at which a hearing will be held for the purpose of reconsidering such issue. Such hearing shall be held not less than 20 days nor more than 60 days after the date notice of such hearing is furnished to such State, unless the Secretary and such State agree in writing to holding the hearing at another time. The Secretary shall affirm, modify, or reverse his original determination within 60 days of the conclusion of the hearing.
>
> (3) Any State which is dissatisfied with a final determination made by the Secretary on such a reconsideration . . . may, within 60 days after it has been notified of such determination, file with the United States court of appeals for the circuit in which such State is located a petition for review of such determination.

The Secretary of Health, Education, and Welfare shall, prior to the beginning of each quarter, estimate the amount to be paid to the State for such quarter under the provisions of subsection (a) of this section, such estimate to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsection, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than the State's proportionate share of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, (B) records showing the number of aged individuals in the State, and (C) such other investigation as the Secretary may find necessary.

> (2) The Secretary of Health, Education, and Welfare shall then certify to the Secretary of the Treasury the amount so estimated by the Secretary of Health, Education, and Welfare, (A) reduced or increased, as the case may be, by any sum by which it finds that its estimate for any prior quarter was greater or less than the amount which should have been paid to the State under subsection (a) of this section for such quarter . . . .

42 U.S.C. § 303(b)(1) and (2); *see id.* §§603(b), 1203(b), 1353(b); 45 C.F.R. § 201.13(a).

When the Secretary reduces a state's estimate under this provision, the reduction is termed a "disallowance"

of a state expenditure. *See* 45 C.F.R. §§ 201.10 to 201.14.[3] States are notified by letter from the regional commissioner of HEW that federal funds for the disallowed expenditure are being withheld. 45 C.F.R. § 201.14(b). The state may request reconsideration of the disallowance under the provisions of 42 U.S.C. § 1316(d); the reconsideration procedure does not provide for a hearing or for judicial review of the reconsideration determination. *See* 42 U.S.C. § 1316(d); 45 C.F.R. § 201.14[4].

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[3]The disallowance procedure applies to expenditures which have already been made by the State under its plan, and is implemented by means of audit exceptions. 45 C.F.R. § 201.13(a). Section 201.13(a) also provides:

> Expenditures in which it is found the Federal Government may not participate and which are not properly adjusted through the State's claim will be deducted from subsequent grants made to the State agency.

[4]45 C.F.R. § 201.14(d) provides at length for reconsideration procedures. Subsection (7) provides in part that "the State may obtain, upon request to him, a conference with the Administrator [of Social and Rehabilitation Service], during which it may discuss with the Administrator its position on the issues." The regulation provides for no further hearing and for no judicial review. This regulation implements 42 U.S.C. § 1316(d), which provides:

> (d) Whenever the Secretary determines that any item or class of items on account of which Federal financial participation is claimed under subchapter I, VI, XIV, XVI, or XIX, XX of this chapter, or part A of subchapter IV of this chapter, shall be disallowed for such participation, the State shall be entitled to and upon request shall receive a reconsideration of the disallowance.

The statutory history of section 1316(d), as quoted below, indicates that the section's sponsors recommended against judicial review of disallowances. 111 Cong.Rec. 3068 (remarks of Sen. Javits, Feb. 18, 1965).

State plans which are in operation are scrutinized by HEW to ensure continuing compliance with the requirements of sections 302, 602, 1202 and 1352, and that no "prohibited requirements" are imposed by the state under the plans. 42 U.S.C. §§ 304, 604, 1204, 1354.[5] When it appears to the Secretary that the state plan is being operated in noncompliance with these regulations, he must give the state agency "reasonable notice and opportunity for hearing" to evaluate the operation of the plan. States dissatisfied with the outcome of such compliance hearings may petition for direct review in the court of appeals, 42 U.S.C. §§ 304, 604, 1204, 1354, 1316(a)(3). If it is then determined that

[5] 42 U.S.C. § 304 provides:

In the case of any State plan which has been approved under this subchapter by the Secretary of Health, Education, and Welfare, if the Secretary, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of such plan, finds—

(1) that the plan has been so changed as to impose any age, residence, or citizenship requirement prohibited by section 302(b) of this title, or that in the administration of the plan any such prohibited requirement is imposed, with the knowledge of such State agency, in a substantial number of cases; or

(2) that in the administration of the plan there is a failure to comply substantially with any provision required by section 302(a) of this title to be included in the plan; the Secretary of Health, Education, and Welfare shall notify such State agency that further payments will not be made to the State (or, in his discretion, that payments will be limited to categories under or parts of the State plan not affected by such failure) until the Secretary is satisfied that such prohibited requirement is no longer so imposed, and that there is no longer any such failure to comply. Until he is so satisfied he shall make no further payments to such State (or shall limit payments to categories under or parts of the State plan not affected by such failure).

the state plan is in noncompliance with federal regulations, the Secretary must terminate federal participation in the plan until the noncompliance is cured. 42 U.S.C. §§ 304, 604, 1204, 1354.

On July 26, 1972, Texas filed its amended expenditure report for the fourth quarter of fiscal 1972. The report included a retroactive claim for more than $91 million (subsequently amended to $92,731,245) as the federal share of expenditures for public services provided by various Texas state agencies during the first three quarters of fiscal 1972. Texas DPW asserted that it had purchased these services from the various agencies during fiscal 1972 pursuant to the plan in effect as of July 1, 1971. HEW denied the $92 million claim, classifying the denial as a disallowance. Texas DPW then asked for and received administrative reconsideration of the denial under section 1316(d); the denial was confirmed. Thereafter, Texas DPW brought this suit in the district court, asking the court to declare HEW's denial of the claim illegal, to return the claim for reconsideration in a full agency hearing, and to order HEW to pay Texas DPW the claimed $92 million pending the reconsideration. The district court determined that HEW had erred in classifying its denial of the Texas claim as a disallowance. The court found that the denial was in effect a finding that Texas DPW had "failed to comply substantially with applicable federal regulations" and ordered that the Secretary provide Texas DPW "reasonable notice and opportunity for hearing as provided in 42 U.S.C. §§ 304, 604, 1204, and 1354," which are the statutory provisions for noncompliance reconsideration. The court refused,

The provisions of sections 604, 1204 and 1354 are similar to those of section 304. Section 1316(a)(3) provides for direct review in the court of appeals of final determinations of the Secretary made under these sections.

however, to order HEW to pay the claimed $92 million to Texas on grounds that such an order under the circumstances would be an "inappropriate" exercise of the court's power of mandamus, and that such an exercise was "implicitly precluded by the Tucker Act." Both HEW and Texas DPW appealed the district court ruling.

On appeal Texas DPW seeks to preserve the district court's classification of HEW's denial of the $92 million claim as a finding of noncompliance. However, Texas DPW seeks reversal of the district court's refusal to order HEW to pay Texas DPW the claimed amount pending outcome of the noncompliance proceedings on remand. HEW argues on appeal that its denial of the $92 million claim was a disallowance. HEW asks that we reinstate this classification, one effect of which would be the withholding of payment of the claimed amount pending further proceedings concerning Texas DPW's entitlement to the funds. HEW argues that if return of the case to HEW is necessary, it should be for further reconsideration of its disallowance of the claim under new reconsideration procedures promulgated pursuant to section 1316(d), set out at 45 C.F.R. § 201.14. These new procedures do not provide for a formal hearing.

[1] It is, therefore, necessary to decide what is the proper classification of HEW's denial of the Texas claim. The unusual circumstances of this case do not fall neatly into any usual classification. After reviewing the Act, the statutory history, and the circumstances of the claim, we have determined that the purposes of the Act and the equities are best served by treating this case as a plan-conformity dispute under section 1316(a), and returning the case to HEW for reconsideration in a formal hearing under that section.

The record reveals that HEW's reasons for denying the Texas DPW claim amount to a finding of

nonconformity with Texas DPW's approved plan and with federal requirements. In evaluating the $92 million claim, HEW conducted a regional office review of the state-claimed expenditure. The regional office report, which appears in the record, states, in its "Summary of Findings,"

> 1. A substantial part of the social services claimed was not covered or purchasable under an approved State Plan nor were purchases of service contracts in place during the period covered by the claim. See page 11 for details.
>
> 2. The State Title I [the aged], IV-A [dependent children], X [the blind] and XIV [the disabled] plans were not in operation with respect to the claimed expenditures during FY 1972 . . . .

Francis D. DeGeorge, an HEW official who worked closely with the Texas DPW claim and who notified Texas DPW of the $92 million reduction in its claimed expenditures, stated in his deposition, "We were trying to make a judgment as to whether, in effect, there was a State plan." The agency determined, he said, "that there was, for the purposes of this decision, no State plan."

The record also contains a letter from HEW to Raymond W. Vowell, Commissioner of Texas DPW, explaining at length the reasons for denial of the $92 million claim. According to the letter "the question to be answered in relation to the claims submitted by the State is whether they were furnished under the State's approved title I, IV, X and XIV plans." The letter concludes that "the claims are not proper and allowable under the provisions of your State plan and the law and regulations."

These examples show quite persuasively that the reason for the denial of the Texas claim was that the

claimed expenditures by the state lay outside the scope of the approved plan under which the claim was made, and in some cases did not conform with federal requirements. In short, the large, retroactive Texas DPW claim reflected, in the eyes of HEW, attempts by Texas DPW to make material changes in the operation of the Texas public service plan.

According to HEW regulations, state plans must provide for amendment "whenever necessary to reflect new or revised Federal statutes or regulations, or material change in any phase of State law, organization, policy or State agency operation." 45 C.F.R. § 205.5(a). The Act provides that amendments to state plans may be considered by HEW through the plan-conformity procedures set out at 42 U.S.C. § 1316(a), thus receiving a full administrative agency hearing, if the state so requests. 42 U.S.C. § 1316(b). Texas, of course, has repeatedly requested a full administrative hearing to decide the issues in this dispute. We find that the plan-conformity procedure in section 1316(a) is the one best suited for reconsideration of Texas DPW's claim, which HEW views as constituting an attempted change in Texas' approved state plan.

[2] The propriety in this case of the plan-conformity procedure, including a full hearing, is supported by the legislative history of the judicial review provisions of the 1965 amendments to the Act. The history shows that the major reason for providing judicial review of HEW decisions concerning state public service plans was to put "the States on a more equal basis with the Federal Government in the administration of the public assistance program" and thereby reduce intergovernmental friction. 111 Cong.Rec. 5048 (remarks of Cong. Dwyer, Mar. 15, 1965). As Senator Jacob Javits stated,

> The [Advisory Commission on Intergovernmental Relations] believes that the most satisfactory approach to providing judicial review of administrative decisions of the Secretary is to establish a procedure whereby in cases of disagreement between the State agency and the Secretary, court review would occur prior to actual implementation of a proposed change in the State's existing approved plan. This would avoid the necessity for withholding or recouping Federal funds. Court review would involve a determination of whether an amendment to the existing plan proposed by the State or a new administrative requirement promulgated by the Federal agency conformed with the intent of the Federal statute. Under such procedure there would be no disruption in the operation of the existing approved State plan until agreement between the parties was reached or the court decision was rendered.
>
> . . . . .
>
> Some States and local officials believe that some form of judicial review should encompass all aspects of the public assistance programs, including matching issues or audit exceptions. However, the much greater concern is for review of decisions regarding plan-conformity issues. The Commission believes that to involve audit exceptions or issues other than those of plan conformity in the judicial review process would create many additional problems.

111 Cong.Rec. 3068 (remarks of Sen. Javits, Feb. 18, 1965).

The policies expressed by Senator Javits also support treatment of the Texas claim as a plan-conformity issue. Availability of a full agency hearing followed by judicial

review puts the state on a "more equal basis" with HEW than does summary disallowance reconsideration through section 1316(d), which provides for no hearing and no judicial review. At the same time, section 1316(a) provisions do not require payment of the claim to Texas pending review. This avoids possible later problems of recoupment of the funds, which the drafters of the amendment intended to avoid. Texas DPW will not be adversely affected by withholding the funds because the services for which the funds are claimed have already been provided; no existing program will be disrupted by lack of funds. Finally, the time requirements of section 1316(a) ensure the most expeditious resolution of this dispute, as well as the briefest possible occupation of HEW resources.

In sum, we find that the dispute in this case results largely from HEW's attempt to deal in a summary manner with a substantial Texas DPW claim for expenditures for services which HEW consider to differ materially from those approved as part of Texas DPW's approved state plan. In view of the statutory history of the judicial review amendments of the Act, we conclude that the dispute should be resolved by means of the procedure established by Congress for dealing with plan-conformity issues, 42 U.S.C. § 1316(a).

Accordingly, the district court's classification of the denial of the Texas DPW $92 million claim as a noncompliance action is reversed. The order of the district court is modified to provide for reconsideration of the Texas claim under the plan-conformity procedures of 42 U.S.C. § 1316(a). The 30-day time period during which the Secretary is to give notice to the state of the hearing date is to run from the effective date of this order.

AFFIRMED in part; MODIFIED in part.

STATE DEPARTMENT OF PUBLIC WELFARE OF the STATE OF TEXAS et al.

v.

Caspar WEINBERGER et al.

Civ. A. No. A-73-CA-185.

United States District Court,

W. D. Texas,
Austin Division
Feb. 12, 1975

Action arising out of denial by Secretary of Health, Education and Welfare of matching federal funds based on state expenditures for social services. The United States District Court for the Western District of Texas, Austin Division, Roberts, J., held that the Secretary of Health, Education and Welfare was under a mandatory obligation to provide Texas State Department of Public Welfare reasonable notice and opportunity for a hearing prior to entry of a decision the effect of which was to disallow certain state social service expenditures from federal financial participation; the Court also held that mandamus would issue compelling the Secretary to give reasonable notice and opportunity for a compliance hearing relative to withholding of funds at issue but payments for services provided three years prior to the litigation in advance of notice and hearing.

Order and decree in accordance with opinion.

1. Social Security and Public Welfare—4

The Secretary of Health, Education and Welfare was under a mandatory obligation to provide Texas State

Department of Public Welfare reasonable notice and opportunity for a hearing prior to entry of a decision the effect of which was to disallow certain state social service expenditures from federal financial participation. Social Security Act, §§ 4, 204, 1004, 1116(a,d), 1404, 42 U.S.C.A. §§ 304, 604, 1204, 1316(a,d), 1354.

2. Courts—518(1)

Sole and exclusive jurisdiction to review a final decision by the Secretary of Health, Education and Welfare to terminate federal funds to a state agency rests with the United States Court of Appeals.

3. Courts—265

Mandamus power of a district court is not to be lightly invoked.

4. Courts—265

A federal district court may act under the mandamus statute only when plaintiff has a clear right to relief sought, defendant has a clear duty to do the act in question, and no other adequate remedy is available. 28 U.S.C.A. § 1361.

5. Mandamus—64

A writ of mandamus would issue compelling Secretary of Health, Education and Welfare to give reasonable notice and an opportunity for a compliance hearing relative to withholding of matching federal funds in connection with state expenditures for social services where it appeared that state had a clear right to relief sought, defendant had a clear duty to do the acts in question, and no other adequate remedy was available.

6. Mandamus—3(8)

Mandamus would not be issued ordering Secretary of Health, Education and Welfare to make certain payments for services provided three years prior to the litigation in advance of notice and hearing.

John L. Hill, Atty. Gen. of Texas., Frank C. Cooksey, Lynn Taylor, Asst. Attys. Gen. of Tex., David Young, Texas Dept.of Public Welfare, Austin, Tex., for plaintiffs.

David Anderson, John T. Boese, Lawrence S. Ebner, Stuart Schiffer, Asst. U. S. Attys. Gen., Washington,D. C., Hugh P. Shovlin,U. S. Atty., San Antonio, Tex., for defendants.

MEMORANDUM OPINION AND ORDER

ROBERTS, District Judge.

This cause comes before the Court for decision following the submission of evidence, argument and authorities by the parties at trial and by way of post-trial submissions. This suit arises from a dispute between officials of the Texas Department of Public Welfare (DPW) and the United States Department of Health, Education and Welfare (HEW) regarding some $92.7 million worth of services allegedly provided to Texas welfare recipients during the first three quarters of fiscal year 1972 pursuant to the State's plan for providing assistance to the needy, blind, aged, permanently and totally disabled, and families with dependent children. This Court has previously dismissed for want of jurisdiction all claims by Plaintiffs except their claim relating to the alleged failure of the Secretary of Health, Education and

Welfare to give notice and the opportunity for a hearing pursuant to 42 U.S.C. §§ 304, 604, 1204 and 1354. 1204 and 1354.

During the first three quarters of fiscal year 1972 the Texas DPW requested and received federal compensation for its welfare expenditures in amounts of $5,137,000, $5,488,000 and $6,607,000 respectively. Beginning in the summer of 1971, however, DPW officials initiated investigation of the possibility that funds appropriated to other State agencies might be used as matching funds for federal financial purchase of social services from those other State agencies. Texas officials soon learned that certain other States utilized such a procedure, enabling those States to receive substantially greater sums from the federal government for the provision of social services than they would otherwise have received. Nevertheless, DPW Commissioner Raymond Vowell's inquiry as to the propriety of such a procedure brought a negative response from HEW officials. In a letter dated September 7, 1971, Dr. Peggy Wildman, the Associate Regional Commissioner for Community Services of HEW's Social and Rehabilitation Service, advised Commissioner Vowell that Texas could use only funds appropriated to the DPW by legislative act as State matching funds.

Subsequently, however, DPW officials learned that the HEW policy set out in Dr. Wildman's September 7 letter was not being followed as policy in other areas of the nation. Consequently, DPW officials renewed their investigation into the possibility of using funds legislatively appropriated to other State agencies as matching funds. Ultimately, on June 15, 1972, Dr. Wildman notified Texas DPW officials that the interpretations embodied in the letter of September 7,

1971, were not in keeping with the current national position of HEW. Thereafter, Texas DPW officials signed agreements with representatives of eleven other State agencies providing for the purchase of certain services from those other agencies. Each of these agreements stated that it was effective July 1, 1971, except for that with the Department of Community Affairs, which stated it was effective September 1, 1971. The eleven other State agencies indisputably did provide certain social services throughout fiscal year 1972, for which Texas would be entitled to federal matching funds had appropriate procedures been followed throughout the year. Texas officials submitted to HEW a claim in the eventual amount of $92,731,245.00 as the federal share of those services for the first three quarters of fiscal year 1972. Additionally, the Texas DPW submitted a timely claim for the fourth quarter of fiscal year 1972 in an amount of some $34.8 million, including the value of social services provided by other State agencies pursuant to the new contracts with DPW.

While HEW officials approved the State's claim for social services provided by various State agencies pursuant to their interdepartmental contracts with DPW for the fourth quarter of fiscal year 1972, HEW denied the Texas suplemental claim of $92,731,245 for social service expenditures for the first three quarters of that year. In a letter dated January 19, 1973, the Secretary of Health, Education and Welfare, acting through the Regional Commissioner of the Social and Rehabilitation Service, stated four "more important reasons" for the denial: 1) Eligibility for services was not determined at or prior to the time of service delivery; 2) Individual service plans were not developed and maintained on a current basis, but were developed after the fact; 3) There were no records of services provided pursuant to such plans; and 4) Accounting and costing

systems were constructed after the fact and were not in effect at the time the services were provided.

Accordingly, the Secretary authorized the payment of no money to Texas pursuant to its supplemental claim for the first three quarters of fiscal year 1972. The Secretary's decision was preceded by no notice, hearing, or opportunity for hearing at which all the facts relevant to Texas' claim might have been developed. DPW officials requested reconsideration of the decision under 42 U.S.C. § 1316 and any other administrative relief available. After the reconsideration mandated by 42 U.S.C. § 1316(d) the Secretary concurred in the decision of the Regional Commissioner to deny the disputed Texas claim.

After a hearing on Defendant's Motion to Dismiss, this Court dismissed all claims by Plaintiffs except their contention that they were denied notice and hearing pursuant to 42 U.S.C. §§ 304, 604, 1204 and 1354. Those provisions require the Secretary, upon a finding that in the administration of a State plan there is a "failure to comply substantially" with applicable regulations, to notify the State agency that further payments will not be made until the Secretary is satisfied that there is no longer a failure to comply. Such a termination of payments, however, is to be made only "after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of such plan." 42 U.S.C. §§ 304, 604, 1204, 1354. The holding of such a hearing is not discretionary with the Secretary. Rather, "Should the Secretary call into question the continuing conformity of the plan or of its administration to federal requirements, he *must* provide reasonable notice and opportunity for hearing to the state agency administering the plan." Arizona State Department of Public Welfare v. Department of Health, Education and Welfare, 449 F.2d 456 (9th Cir.

1971) (emphasis added). *See also* Connecticut State Department of Public Welfare v. Department of Health, Education and Welfare, 448 F.2d 209 (2nd Cir. 1971). After such notice and hearing, a State which is dissatisfied with a final determination made by the Secretary may, within 60 days, file a petition for review in the court of appeals for the circuit in which the State is located. 42 U.S.C. § 1316(a) (3).

The Secretary, however, seeks to characterize his action as a "disallowance" under 42 U.S.C. § 1316(d). No provision is made for judicial review of a decision to "disallow" pursuant to Section 1316(d). The Secretary therefore contends that a decision to "disallow" is a matter of absolute discretion, and that no judicial review is permitted. There is legislative history to support the Secretary's position on this point, but the ultimate question of whether a "disallowance" (as opposed to a decision that there is a "failure to comply substantially" with applicable regulations) is judicially reviewable need not be reached in this case.

Regardless of the denomination or characterization put on the decision by the Secretary, his decision was clearly a determination that the Texas DPW had, in its administration of the Texas plan for providing social services, failed to comply substantially with applicable federal regulations. Pursuant to his authority to make such rules and regulations as may be necessary to the "proper and efficient operation" of State plans (as required by 42 U.S.C. §§ 302(a) (5) (A), 602 (a) (5) (A), 1201(a) (5) (A) and 1352(a) (5) (A)), the Secretary has promulgated numerous regulations. In a December 20, 1972, Memorandum given the heading "Subject: Interpretation of Federal Regulations in Determining the Allowability of State Claims for Federal Financial Participation in Expenditures for Social Services," the Administrator of HEW's Social and Rehabilitation

Service undertook to interpret these and other regulations promulgated pursuant to the Secretary's rule-making authority.

In his letter of January 19, 1973, the Social and Rehabilitation Service Regional Commissioner advised DPW Commissioner Vowell that the reasons for denying Texas' supplemental claim were "specifically stated" in the SRS Administrator's Memorandum of December 20, 1972. The letter then set out the above-described "more important reasons" for the decision (described in the letter as a "disallowance"), applying interpretations embodied in Issues 4 and 5 of the December 20 Memorandum.

[1] Thus, it clearly appears that HEW officials sought the best of both worlds. The decision to withhold funds purportedly rested upon interpretations of federal regulations required to be a part of the Texas plan for providing social services. To avoid the statutory requirement of notice and hearing prior to such a decision, however, the Secretary proclaimed his decision to be a "disallowance" based upon a statutory authority intended to permit the Secretary to disallow a certain "item or class of items" for which funding is requested, and as to which no judicial review was available. Certainly the effect of the Secretary's decision was to "disallow" a "class of items" from federal financial participation. We do not, however, believe that Congress intended the limited "disallowance" power of the Secretary found in 42 U.S.C. § 1316(d) to subvert the procedures carefully set out in 42 U.S.C. §§ 304, 604, 1204, 1354 and 1316(a) for notice, hearing and judicial review of a determination that the State has failed to comply substantially with applicable federal regulations. We therefore conclude that the Secretary was under a mandatory obligation to provide the Texas Department of Public Welfare reasonable notice and

the opportunity for a hearing pursuant to 42 U.S.C. §§ 304, 604, 1204 and 1354. The record is clear that he did not.

[2] The question remains of what, if any, relief may be afforded by this Court. The sole and exclusive jurisdiction to review a final decision by the Secretary to terminate federal funds to a State agency rests with the United States Court of Appeals. *See* Gardner v. Alabama, 385 F.2d 804 (5th Cir. 1967). Accordingly, this Court has heretofore dismissed all claims by Plaintiffs directed at the substantive validity or propriety of the Secretary's decision. What is left is Plaintiff's contention that this Court has jurisdiction pursuant to the Declaratory Judgments Act, 28 U.S.C. § 2201, and the mandamus statute, 28 U.S.C. § 1361, to find that the Secretary has a mandatory duty to issue reasonable notice and provide an opportunity for hearing prior to withholding funds, and to order the Secretary's performance of this duty.

[3, 4] The mandamus power of a district court is not to be lightly invoked. A district court may act under the mandamus statute only when: a) the plaintiff has a clear right to the relief sought; b) the defendant has a clear duty to do the act in question; and c) no other adequate remedy is available. Carter v. Seamans, 411 F.2d 767 (5th Cir. 1969). For reasons heretofore stated, we conclude that these requirements are satisfied in this case. Plaintiffs had a right to receive, and Defendants had a duty to grant reasonable notice and the opportunity for a conformity hearing. 42 U.S.C. §§ 304, 604, 1204, 1354. Arizona State Department of Public Welfare v. Department of Health, Education and Welfare, *supra;* Connecticut State Department of Public Welfare v. Department of Health, Education and Welfare, *supra*. Moreover, no alternative remedy for the wrong alleged has been shown to exist. A similar

conclusion was reached in Minnesota v. Weinberger, 359 F.Supp. 789 (D.Minn.1973), although the court there went further and concluded that the district court's mandamus power authorized the court to order the Secretary of the Treasury to pay sums due the States for administration of social services programs.

[5, 6] We therefore conclude that a writ of mandamus should issue, compelling the Secretary to give reasonable notice and the opportunity for a compliance hearing relative to the withholding of funds at issue. Plaintiffs, however, seek to have the Court go a step further and utilize its mandamus power to do indirectly what we cannot do directly. Plaintiffs seek a writ of mandamus ordering the Secretary to afford reasonable notice and hearing prior to the withholding of funds for the first three quarters of fiscal year 1972. Thus, the Secretary would be compelled to pay the State first and then issue notice, hold a compliance hearing, and reach his decision. Indeed, the normal procedure in a compliance case would be for the Secretary to continue payments pending a final decision. This, however, is not a normal case. The purpose of continuing payments pending compliance proceedings is to permit the continuous operation of State plans for the provision of social services. The present case, however, involves payments for services provided some three years ago. This is clearly distinguishable from a situation involving the withholding of payments for future services. The absence of an immediate need for the disputed funds to maintain social services in Texas accentuates the adequacy of the alternative remedy available to Plaintiffs: presentation of their case by way of the compliance hearing mandated herein, with a right of judicial review in the court of appeals. The presence of such an alternative remedy renders invocation of this Court's mandamus power particularly inapporpriate. Moreover, we perceive such an

application of the mandamus statute to be implicity precluded by the Tucker Act, 28 U.S.C. § 1346, and by Gardner v. Alabama, *supra*. It is accordingly

Ordered, adjudged and decreed that the Secretary of Health, Education and Welfare be, and hereby is, ordered to provide reasonable notice and opportunity for hearing as provided in 42 U.S.C. §§ 304, 604, 1204 and 1354 and regulations promulgated pursuant thereto, relative to the withholding of $92,731,245.00 claimed by Plaintiffs to be a portion of the federal financial share of social services provided pursuant to State plans for the provision of such services during the first three quarters of fiscal year 1972; that the failure of the Secretary of Health, Education and Welfare to afford reasonable notice and the opportunity for hearing prior to the withholding of said funds be, and hereby is, declared to be unlawful and in violation of 42 U.S.C. §§ 304, 604, 1204 and 1354; and that all additional relief sought by Plaintiffs be, and hereby is, denied. This Memorandum Opinion and Order shall constitute findings of fact and conclusions of law.

Supreme Court, U. S.
FILED
FEB 21 1978
MICHAEL RODAK, JR., CLERK

APPENDIX B

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1977

No. 77-1181

Department of Human Resources (formerly State Department of Public Welfare) of the State of Texas,

Petitioner

v.

Joseph A. Califano, Jr., Secretary of Health, Education and Welfare, and Michael Blumenthal, Secretary of the Treasury,

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

John L. Hill
Attorney General of Texas

David M. Kendall
First Assistant Attorney General of Texas

Frank C. Cooksey
(Acting as Special Assistant Attorney General)
Swift and Swift, P.C.
1444 American Bank Tower
Austin, Texas 78701

Attorneys for the Petitioner

APPENDIX B

Supreme Court of the United States

No. A-526

STATE DEPARTMENT OF PUBLIC WELFARE OF TEXAS, ET AL.,

Petitioners,

v.

JOSEPH A. CALIFANO, JR., SECRETARY OF HEALTH, EDUCATION AND WELFARE

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

UPON CONSIDERATION of the application of counsel for petitioner(s),

IT IS ORDERED that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including *February 20*, 19 *78*.

/s/ Lewis F. Powell, Jr.
Associate Justice of the Supreme Court of the United States

Dated this *19th*
day of *December*, 19 *77*.

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

NO. 75-1953

U.S. COURT OF APPEALS
F I L E D

NOV 1 '77

EDWARD W. WADSWORTH
CLERK

STATE DEPARTMENT OF PUBLIC WELFARE OF THE STATE OF TEXAS, Et. Al.,

Plaintiffs-Appellees, Cross-Appellants,

versus

JOSEPH A. CALIFANO, JR., Secretary of Health, Education and Welfare, Et. Al.,

Defendants-Appellants, Cross-Appellees.

- - - -

Appeals from the United States District Court for the Western District of Texas

- - - - -

O R D E R:

( ) The motion of _____ for stay of the issuance of the mandate pending petition for writ of certiorari is DENIED.

( ) The motion of _____ for stay of the issuance of the mandate pending

petition for writ of certiorari is GRANTED to and including _____ , the stay to continue in force until the final disposition of the case by the Supreme Court, provided that within the period above mentioned there shall be filed with the Clerk of this Court the certificate of the Clerk of the Supreme Court that the certiorari petition has been filed. The Clerk shall issue the mandate upon the filing of a copy of an order of the Supreme Court denying the writ, or upon the expiration of the stay granted herein, unless the above mentioned certificate shall be filed with the Clerk of this Court within that time.

(x) The motion for a further stay of the issuance of the mandate is GRANTED to and including *March 1, 1978*, under the same conditions as set forth in the preceding paragraph.

( ) IT IS ORDERED that the motion for a further stay of the issuance of the mandate is DENIED.

/s/ Robert Ainsworth
United States Circuit Judge

United States Court of Appeals

FIFTH CIRCUIT

OFFICE OF THE CLERK

EDWARD W. WADSWORTH
CLERK

600 CAMP STREET
NEW ORLEANS, LA. 70130

October 11, 1977

Mr. Frank C. Cooksey
Attorney
1444 American Bank Tower
Austin, TX 78701

No. 75-1953 - State Department of Public Welfare of the State of Texas, ET AL. v. Joseph A. Califano, Jr., etc., ET AL.

MANDATE STAYED TO AND INCLUDING
October 30, 1977

Dear Counsel:

The court has this day granted a stay of the issuance of the mandate to the date as shown above. If during the period of the stay there is filed with the clerk of this court a notice from the clerk of the Supreme Court that the party who has obtained the stay has filed a petition for the writ in that court, the stay shall continue until final disposition by the Supreme Court. Upon the filing of a copy of an order of the Supreme Court denying the petition for writ of certiorari the mandate shall issue immediately under Rule 41, FRAP.

Under revised Rule 21(1) of the Supreme Court effective July 1, 1970, a record is no longer required in connection with an application for writ of certiorari, and therefore will not be routinely prepared by this office (38LW 3502).

A copy of the opinion, judgment and denial of rehearing are still required by the Supreme Court to be incorporated as an appendix to your petition. Enclosed are copies of the said documents which have been entered in this cause.

Very truly yours,

Edward W. Wadsworth, Clerk

By /s/ Susan N. Gravois
Deputy Clerk

enc.

cc: Messrs. Robert E. Kopp
Michael H. Stein

United States Court of Appeals

FIFTH CIRCUIT

OFFICE OF THE CLERK

EDWARD W. WADSWORTH
CLERK

TEL 504-589-6514
600 CAMP STREET
NEW ORLEANS, LA. 70130

September 23, 1977

TO ALL PARTIES LISTED BELOW:

No. 75-1953 - State Department of Public Welfare of the State of Texas, et al. vs. Joseph A. Califano, Jr., Secretary of H.E.W., et al.

Dear Counsel:

This is to advise that an order has this day been entered denying the petition ( ) for rehearing, and no member of the panel nor Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Local Fifth Circuit Rule 12) the petition ( ) for rehearing en banc has also been denied.

See Rule 41, Federal Rules of Appellate Procedure for issuance and stay of the mandate.

Very truly yours,

Edward W. Wadsworth, Clerk

By /s/ Clare F. Sachs
Deputy Clerk

cc: Messrs. Robert E. Kopp
Michael H. Stein
Messrs. Frank C. Cooksey
John L. Hill
David M. Kendall

UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 75-1953

D. C. Docket No. A-73-CA-185

STATE DEPARTMENT OF PUBLIC WELFARE OF THE STATE OF TEXAS, Et. Al.,
Plaintiffs-Appellees,
Cross-Appellants,

versus

JOSEPH A. CALIFANO, JR., Secretary of Health, Education and Welfare, Et. Al.,
Defendants-Appellants,
Cross-Appellees.

Appeals from the United States District Court for the Western District of Texas

Before AINSWORTH and MORGAN, Circuit Judges, and LYNNE*, District Judge.

*Senior District Judge of the Northern District of Alabama, sitting by designation.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the **Western District of Texas, and was argued by counsel;**

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, **affirmed in part and modified in part;**

It is further ordered that plaintiffs-appellees cross-appellants pay to defendants-appellants cross-appellees, the costs on appeal to be taxed by the Clerk of this Court.

July 25, 1977

Issued as Mandate: AUG 22 1977

Supreme Court, U. S.
FILED
FEB 21 1978
MICHAEL RODAK, JR., CLERK

APPENDIX C

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1977

No. 77-1181

Department of Human Resources (formerly State Department of Public Welfare) of the State of Texas,

Petitioner

v.

Joseph A. Califano, Jr., Secretary of Health, Education and Welfare, and Michael Blumenthal, Secretary of the Treasury,

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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Attorney General of Texas

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§ 302. State old-age and medical assistance plans—Contents

(a) A State plan for old-age assistance, or for medical assistance for the aged, or for old-age assistance and medical assistance for the aged must—

(1) provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them;

(2) provide for financial participation by the State;

(3) either provide for the establishment or designation of a single State agency to administer the plan, or provide for the establishment or designation of a single State agency to supervise the administration of the plan;

(4) provide for granting an opportunity for a fair hearing before the State agency to any individual whose claim for assistance under the plan is denied or is not acted upon with reasonable promptness;

(5) provide (A) such methods of administration (including methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Secretary to be necessary for the proper and efficient operation of the plan, and (B) for the training and effective use of paid subprofessional staff, with particular emphasis on the full-time or part-time employment of recipients and other persons of low income, as community service aides, in the administration of the plan and for the use of nonpaid or partially paid volunteers in a social service

volunteer program in providing services to applicants and recipients and in assisting any advisory committees established by the State agency;

(6) provide that the State agency will make such reports, in such form and containing such information, as the Secretary may from time to time require, and comply with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports;

(7) provide safeguards which restrict the use or disclosure of information concerning applicants and recipients to purposes directly connected with the administration of the State plan;

(8) provide that all individuals wishing to make application for assistance under the plan shall have opportunity to do so, and that such assistance shall be furnished with reasonable promptness to all eligible individuals;

(9) provide, if the plan includes assistance for or on behalf of individuals in private or public institutions, for the establishment or designation of a State authority or authorities which shall be responsible for establishing and maintaining standards for such institutions;

(10) if the State plan includes old-age assistance—

(A) provide that the State agency shall, in determining need for such assistance, take into consideration any other income and resources of an individual claiming old-age assistance, as well as any expenses reasonably attributable to the earning of any such income; except that, in making such determination, (i) the State agency may disregard not more than $7.50 per month of any income and (ii) of the first $80 per month of additional income

which is earned the State agency may disregard not more than the first $20 thereof plus one-half of the remainder;

(B) include reasonable standards, consistent with the objectives of this subchapter, for determining eligibility for and the extent of such assistance; and

(C) provide a description of the services (if any) which the State agency makes available to applicants for and recipients of such assistance to help them attain self-care including a description of the steps taken to assure, in the provision of such services, maximum utilization of other agencies providing similar or related services;

(11) if the State plan includes medical assistance for the aged—

(A) provide for inclusion of some institutional and some noninstitutional care and services;

(B) provide that no enrollment fee, premium, or similar charge will be imposed as a condition of any individual's eligibility for medical assistance for the aged under the plan;

(C) provide for inclusion, to the extent required by regulations prescribed by the Secretary, of provisions (conforming to such regulations) with respect to the furnishing of such assistance to individuals who are residents of the State but are absent therefrom;

(D) include reasonable standards, consistent with the objectives of this subchapter, for determining eligibility for and the extent of such assistance; and

(E) provide that no lien may be imposed against the property of any individual prior to his death on account of medical assistance for the aged paid or to be paid on his behalf under the plan (except pursuant to the judgment of a court on account of benefits incorrectly paid on behalf of such individual), and that there shall be no adjustment or recovery (except, after the death of such individual and his surviving spouse, if any, from such individual's estate) of any medical assistance for the aged correctly paid on behalf of such individual under the plan;

(12) if the State plan includes assistance to or in behalf of individuals who are patients in institutions for mental diseases—

(A) provide for having in effect such agreements or other arrangements with State authorities concerned with mental diseases, and, where appropriate, with such institutions, as may be necessary for carrying out the State plan, including arrangements for joint planning and for development of alternate methods of care, arrangements providing assurance of immediate readmittance to institutions where needed for individuals under alternate plans of care, and arrangements providing for access to patients and facilities, for furnishing information, and for making reports;

(B) provide for an individual plan for each such patient to assure that the institutional care provided to him is in his best interests, including, to that end, assurances that there will be initial and periodic review of his medical and other needs, that he will be given appropriate medical treatment within the institution, and that there will be a

perodic determination of his need for continued treatment in the institution;

(C) provide for the development of alternate plans of care, making maximum utilization of available resources, for recipients who would otherwise need care in such institutions, including appropriate medical treatment and other assistance; for services referred to in section 303(a)(4)(A)(i) and (ii) of this title which are appropriate for such recipients and for such patients; and for methods of administration necessary to assure that the responsibilities of the State agency under the State plan with respect to such recipients and such patients will be effectively carried out; and

(D) provide methods of determining the reasonable cost of institutional care for such patients; and

(13) if the State plan includes assistance to or in behalf of patients in public institutions for mental diseases, show that the State is making satisfactory progress toward developing and implementing a comprehensive mental health program, including provision for utilization of community mental health centers, nursing homes, and other alternatives to care in public institutions for mental diseases.

Approval by Secretary

(b) The Secretary shall approve any plan which fulfills the conditions specified in subsection (a) of this section, except that he shall not approve any plan which imposes, as a condition of eligibility for assistance under the plan—

(1) an age requirement of more than sixty-five years; or

(2) any residence requirement which (A) in the case of applicants for old-age assistance, excludes any resident of the State who has resided therein five years during the nine years immediately preceding the application for old-age assistance and has resided therein continuously for one year immediately preceding the application, and (B) in the case of applicants for medical assistance for the aged, excludes any individual who resides in the State; or

(3) any citizenship requirement which excludes any citizen of the United States.

§ 303. Payments to States; computation of amounts; quarterly expenditures to exceed average of total expenditures for each quarter of fiscal year ending June 30, 1965

(a) From the sums appropriated therefor, the Secretary of the Treasury shall pay to each State which has a plan approved under this subchapter, for each quarter, beginning with the quarter commencing October 1, 1960—

(1) in the case of any State other than Puerto Rico, the Virgin Islands, and Guam, an amount equal to the sum of the following proportions of the total amounts expended during each month of such quarter as old-age assistance under the State plan (including expenditures for premiums under part B of subchapter XVIII of this chapter for individuals who are recipients of money payments under such plan and other insurance premiums for medical or any other type of remedial care or the cost thereof)—

(A) 31/37 of such expenditures, not counting so much of any expenditure with respect to such month as exceeds the product of $37 multiplied by the total number of recipients of old-age assistance for such month (which total number, for purposes of this subsection, means (i) the number of individuals who received old-age assistance in the form of money payments for such month, plus (ii) the number of other individuals with respect to whom expenditures were made in such month as old-age assistance in the form of medical or any other type of remedial care); plus

(B) the larger of the following:

(i) (I) the Federal percentage (as defined in section 1301(a)(8) of this title) of the amount by which such expenditures exceed the amount which may be counted under clause (A), not counting so much of such excess with respect to such month as exceeds the product of $38 multiplied by the total number of recipients of old-age assistance for such month, plus (II) 15 per centum of the total expended during such month as old-age assistance under the State plan in the form of medical or any other type of remedial care, not counting so much of such expenditure with respect to such month as exceeds the product of $15 multiplied by the total number of recipients of old-age assistance for such month, or

(ii) (I) the Federal medical percentage (as defined in section 306(c) of this title) of the amount by which such expenditures

exceed the maximum which may be counted under clause (A), not counting so much of any expenditures with respect to such month as exceeds (a) the product of $52 multiplied by the total number of such recipients of old-age assistance for such month, or (b) if smaller, the total expended as old-age assistance in the form of medical or any other type of remedial care with respect to such month plus the product of $37 multiplied by such total number of such recipients, plus (II) the Federal percentage of the amount by which the total expended during such month as old-age assistance under the State plan exceeds the amount which may be counted under clause (A) and the preceding provisions of this clause (B) (ii), not counting so much of such excess with respect to such month as exceeds the product of $38 multiplied by the total number of such recipients of old-age assistance for such month;

(2) in the case of Puerto Rico, the Virgin Islands, and Guam, an amount equal to—

(A) one-half of the total of the sums expended during such quarter as old-age assistance under the State plan (including expenditures for premiums under Part B of subchapter XVIII of this chapter for individuals who are recipients of money payments under such plan and other insurance premiums for medical or any other type of remedial care or the cost thereof), not counting so much of any expenditure with respect to any month as exceeds $37.50 multiplied by the total number

of recipients of old-age assistance for such month; plus

(B) the larger of the following amounts: (i) one-half of the amount by which such expenditures exceed the maximum which may be counted under clause (A), not counting so much of any expenditure with respect to any month as exceeds (I) the product of $45 multiplied by the total number of such recipients of old-age assistance for such month, or (II) if smaller, the total expended as old-age assistance in the form of medical or any other type of remedial care with respect to such month plus the product of $37.50 multiplied by the total number of such recipients, or (ii) 15 per centum of the total of the sums expended during such quarter as old-age assistance under the State plan in the form of medical or any other type of remedial care, not counting so much of any expenditure with respect to any month as exceeds the product of $7.50 multiplied by the total number of such recipients of old-age assistance for such month;

(3) in the case of any State, an amount equal to the Federal medical percentage (as defined in section 306(c) of this title) of the total amounts expended during such quarter as medical assistance for the aged under the State plan (including expenditures for insurance premiums for medical or any other type of remedial care or the cost thereof); and

(4) in the case of any State whose State plan approved under section 302 of this title meets the requirements of subsection (c) (1) of this section, an amount equal to the sum of the—following proportions of the total amounts expended during

such quarter as found necessary by the Secretary of Health, Education, and Welfare for the proper and efficient administration of the State plan—

(A) 75 per centum of so much of such expenditures are for—

(i) services which are prescribed pursuant to subsection (c) (1) of this section and are provided (in accordance with the next sentence) to applicants for or recipients of assistance under the plan to help them attain or retain capability for self-care, or

(ii) other services, specified by the Secretary as likely to prevent or reduce dependency, so provided to such applicants or recipients, or

(iii) any of the services prescribed pursuant to subsection (c) (1) of this section, and of the services specified as provided in clause (ii), which the Secretary may specify as appropriate for individuals who, within such period or periods as the Secretary may prescribe, have been or are likely to become applicants for or recipients of assistance under the plan, if such services are requested by such individuals and are provided to such individuals in accordance with the next sentence, or

(iv) the training of personnel employed or preparing for employment by the State agency or by the local agency administering the plan in the political subdivision; plus

(B) one-half of so much of such expenditures (not included under subparagraph (A)) as are for services provided (in accordance with the next sentence) to applicants for or recipients of assistance under the plan, and to individuals requesting such services who (within such period or periods as the Secretary may prescribe) have been or are likely to become applicants for or recipients of such assistance; plus

(C) one-half of the remainder of such expenditures.

The services referred to in subparagraphs (A) and (B) shall, except to the extent specified by the Secretary, include only—

(D) services provided by the staff of the State agency, or of the local agency administering the State plan in the political subdivision: *Provided*, That no funds authorized under this subchapter shall be available for services defined as vocational rehabilitation services under the Vocational Rehabilitation Act (i) which are available to individuals in need of them under programs for their rehabilitation carried on under a State plan approved under such Act, or (ii) which the State agency or agencies administering or supervising the administration of the State plan approved under such Act are able and willing to provide if reimbursed for the cost thereof pursuant to agreement under subparagraph (E), if provided by such staff, and

(E) subject to limitations prescribed by the Secretary, services which in the judgment of

the State agency cannot be as economically or as effectively provided by the staff of such State or local agency and are not otherwise reasonably available to individuals in need of them, and which are provided, pursuant to agreement with the State agency, by the State health authority or the State agency or agencies administering or supervising the administration of the State plan for vocational rehabilitation services approved under the Vocational Rehabilitation Act or by any other State agency which the Secretary may determine to be appropriate (whether provided by its staff or by contract with public (local) or nonprofit private agencies);

except that services described in clause (ii) of subparagraph (D) hereof may be provided only pursuant to agreement with such State agency or agencies administering or supervising the administration of the State plan for vocational rehabilitation services so approved. The portion of the amount expended for administration of the State plan to which subparagraph (A) applies and the portion thereof to which subparagraphs (B) and (C) apply shall be determined in accordance with such methods and procedures as may be permitted by the Secretary; and

(5) in the case of any State whose State plan approved under section 302 of this title does not meet the requirements of subsection (c) (1) of this section, an amount equal to one-half of the total of the sums expended during such quarter as found necessary by the Secretary for the proper and efficient administration of the State plan, including services referred to in paragraph (4) and provided in accordance with the provisions of such paragraph.

(b) The method of computing and paying such amounts shall be as follows:

(1) The Secretary of Health, Education, and Welfare shall, prior to the beginning of each quarter, estimate the amount to be paid to the State for such quarter under the provisions of subsection (a) of this section, such estimate to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsection, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than the State's proportionate share of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, (B) records showing the number of aged individuals in the State, and (C) such other investigation as the Secretary may find necessary.

(2) The Secretary of Health, Education, and Welfare shall then certify to the Secretary of the Treasury the amount so estimated by the Secretary of Health, Education, and Welfare, (A) reduced or increased, as the case may be, by any sum by which it finds that its estimate for any prior quarter was greater or less than the amount which should have been paid to the State under subsection (a) of this section for such quarter, and (B) reduced by a sum equivalent to the pro rata share to which the United States is equitably entitled, as determined by the Secretary of Health, Education, and Welfare, of the net amount recovered during any prior quarter by the State or any political subdivision thereof with respect to assistance furnished under the State plan; except that such increases or reductions shall

not be made to the extent that such sums have been applied to make the amount certified for any prior quarter greater or less than the amount estimated by the Secretary for such prior quarter: *Provided*, That any part of the amount recovered from the estate of a deceased recipient which is not in excess of the amount expended by the State or any political subdivision thereof for the funeral expenses of the deceased shall not be considered as a basis for reduction under clause (B) of this paragraph.

(3) The Secretary of the Treasury shall thereupon, through the Fiscal Service of the Treasury Department and prior to audit or settlement by the General Accounting Office, pay to the State, at the time or times fixed by the Secretary of Health, Education, and Welfare, the amount so certified.

(c) (1) In order for a State to qualify for payments under paragraph (4) of subsection (a) of this section, its State plan approved under section 302 of this title must provide that the State agency shall make available to applicants for or recipients of old-age assistance under such State plan at least those services to help them attain or retain capability for self-care which are prescribed by the Secretary.

(2) In the case of any State whose State plan included a provision meeting the requirements of paragraph (1), but with respect to which the Secretary finds, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of such plan, that—

(A) the provision has been so changed that it no longer complies with the requirements of paragraph (1), or

(B) in the administration of the plan there is a failure to comply substantially with such provision,

the Secretary shall notify such State agency that further payments will not be made to the State under paragraph (4) of subsection (a) of this section until he is satisfied that there will no longer be any such failure to comply. Until the Secretary is so satisfied further payments with respect to the administration of such State plan shall not be made under paragraph (4) of subsection (a) of this section but shall instead be made, subject to the other provisions of this subchapter, under paragraph (5) of such subsection.

(d) Notwithstanding the preceding provisions of this section, the amount determined under such provisions for any State for any quarter which is attributable to expenditures with respect to patients in institutions for mental diseases shall be paid only to the extent that the State makes a showing satisfactory to the Secretary that total expenditures in the State from Federal, State, and local sources for mental health services (including payments to or in behalf of individuals with mental health problems) under State and local public health and public welfare programs for such quarter exceed the average of the total expenditures in the State from such sources for such services under such programs for each quarter of the fiscal year ending June 30, 1965. For purposes of this subsection, expenditures for such services for each quarter in the fiscal year ending June 30, 1965, in the case of any State shall be determined on the basis of the latest data, satisfactory to the Secretary, available to him at the time of the first determination by him under this subsection for such State; and expenditures for such services for any quarter beginning after December 31, 1965, in the case of any State shall be determined on the basis of the latest data, satisfactory to the Secretary, available to him at the

time of the determination under this subsection for such State for such quarter; and determinations so made shall be conclusive for purposes of this subsection.

§ 304. Stopping payment on deviation from required provisions of plan or failure to comply therewith

In the case of any State plan which has been approved under this subchapter by the Secretary of Health, Education, and Welfare, if the Secretary, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of such plan, finds—

(1) that the plan has been so changed as to impose any age, residence, or citizenship requirement prohibited by section 302 (b) of this title, or that in the administration of the plan any such prohibited requirement is imposed, with the knowledge of such State agency, in a substantial number of cases; or

(2) that in the administration of the plan there is a failure to comply substantially with any provision required by section 302 (a) of this title to be included in the plan;

the Secretary of Health, Education, and Welfare shall notify such State agency that further payments will not be made to the State (or, in his discretion, that payments will be limited to categories under or parts of the State plan not affected by such failure) until the Secretary is satisfied that such prohibited requirement is no longer so imposed, and that there is no longer any such failure to comply. Until he is so satisfied he shall make no further payments to such State (or shall limit payments to categories under or parts of the State plan not affected by such failure).

§ 1202. State plans for aid to blind

(a) A State plan for aid to the blind must (1) provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them; (2) provide for financal participation by the State; (3) either provide for the establishment or designation of a single State agency to administer the plan, or provide for the establishment or designation of a single State agency to supervise the administration of the plan; (4) provide for granting an opportunity for a fair hearing before the State agency to any individual whose claim for aid to the blind is denied or is not acted upon with reasonable promptness; (5) provide (A) such methods of administration (including after January 1, 1940, methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Secretary to be necessary for the proper and efficient operation of the plan, and (B) for the training and effective use of paid sub-professional staff, with particular emphasis on the full-time or part-time employment of recipients and other persons of low-income, as community service aids, in the administration of the plan and for the use of nonpaid or partially paid volunteers in a social service volunteer program in providing services to applicants and recipients and in assisting any advisory committees established by the State agency; (6) provide that the State agency will make such reports, in such form and containing such information, as the Secretary may from time to time require, and comply with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports; (7) provide that no aid will be furnished any individual under the plan with respect to any period with respect to

which he is receiving old-age assistance under the State plan approved under section 302 of this title or aid to families with dependent children under the State plan approved under section 602 of this title; (8) provide that the State agency shall, in determining need, take into consideration any other income and resources of the individual claiming aid to the blind, as well as any expenses reasonably attributable to the earning of any such income, except that, in making such determination, the State agency (A) shall disregard the first $85 per month of earned income, plus one-half of earned income in excess of $85 per month, (B) shall, for a period not in excess of twelve months, and may, for a period not in excess of thirty-six months, disregard such additional amounts of other income and resources, in the case of an individual who has a plan for achieving self-support approved by the State agency, as may be necessary for the fulfillment of such plan, and (C) may, before disregarding the amounts referred to in clauses (A) and (B), disregard not more than $7.50 of any income; (9) provide safeguards which restrict the use or disclosure of information concerning applicants and recipients to purposes directly connected with the administration of aid to the blind; (10) provide that, in determining whether an individual is blind, there shall be an examination by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select; (11) effective July 1, 1951, provide that all individuals wishing to make application for aid to the blind shall have opportunity to do so, and that aid to the blind shall be furnished with reasonable promptness to all eligible individuals; (12) effective July 1, 1953, provide, if the plan includes payments to individuals in private or public institutions, for the establishment or designation of a State authority or authorities which shall be responsible for establishing and maintaining standards for such institutions; and (13) provide a description of the services (if any) which the State

agency makes available to applicants for and recipients of aid to the blind to help them attain self-support or self-care, including a description of the steps taken to assure, in the provision of such services, maximum utilization of other agencies providing similar or related services.

(b) The Secretary shall approve any plan which fulfills the conditions specified in subsection (a) of this section, except that he shall not approve any plan which imposes, as a condition of eligibility for aid to the blind under the Plan---

(1) Any residence requirement which excludes any resident of the State who has resided therein five years during the nine years immediately preceding the application for aid and has resided therein continuously for one year immediately preceding the application; or

(2) Any citizenship requirement which excludes any citizen of the United States.

In the case of any State (other than Puerto Rico and the Virgin Islands) which did not have on January 1, 1949, a State plan for aid to the blind approved under this subchapter, the Secretary shall approve a plan of such State for aid to the blind for purposes of this subchapter, even though it does not meet the requirements of clause (8) of subsection (a) of this section, if it meets all other requirements of this subchapter for an approved plan for aid to the blind; but payments under section 1203 of this title shall be made, in the case of any such plan, only with respect to expenditures thereunder which would be included as expenditures for the purposes of section 1203 of this title under a plan approved under this section without regard to the provisions of this sentence.

§ 1203. Payment to States; computation of amounts

(a) From the sums appropriated therefor, the Secretary of the Treasury shall pay to each State which has an approved plan for aid to the blind, for each quarter, beginning with the quarter commencing October 1, 1958—

(1) in the case of any State other than Puerto Rico, the Virgin Islands, and Guam, an amount equal to the sum of the following proportions of the total amounts expended during such quarter as aid to the blind under the State plan (including expenditures for premiums under part B of subchapter XVIII of this chapter for individuals who are recipients of money payments under such plan and other insurance premiums for medical or any other type of remedial care or the cost thereof)—

(A) 31/37 of such expenditures, not counting so much of any expenditure with respect to any month as exceeds the product of $37 multiplied by the total number of recipients of aid to the blind for such month (which total number, for purposes of this subsection, means (i) the number of individuals who received aid to the blind in the form of money payments for such month, plus (ii) the number of other individuals with respect to whom expenditures were made in such month as aid to the blind in the form of medical or any other type or remedial care); plus

(B) the Federal percentage of the amount by which such expenditures exceed the maximum which may be counted under clause (A), not counting so much of any expenditure

with respect to any month as exceeds the product of $75 multiplied by the total number of such recipients of aid to the blind for such month; and

(2) in the case of Puerto Rico, the Virgin Islands, and Guam, an amount equal to one-half of the total of the sums expended during such quarter as aid to the blind under the State plan (including expenditures for premiums under part B of subchapter XVIII of this chapter for individuals who are recipients of money payments under such plan and other insurance premiums for medical or any other type of remedial care or the cost thereof), not counting so much of any expenditure with respect to any month as exceeds $37.50 multiplied by the total number of recipients of aid to the blind for such month; and

(3) in the case of any State whose State plan approved under section 1202 of this title meets the requirements of subsection (c) (1) of this section, an amount equal to the sum of the following proportions of the total amounts expended during such quarter as found necessary by the Secretary of Health, Education, and Welfare for the proper and efficient administration of the State plan—

(A) 75 per centum of so much of such expenditures as are for—

(i) services which are prescribed pursuant to subsection (c) (1) of this section and are provided (in accordance with the next sentence) to applicants for or recipients of aid to the blind to help them attain or retain capability for self-support or self-care, or

(ii) other services, specified by the Secretary as likely to prevent or reduce

dependency, so provided to such applicants or recipients, or

(iii) any of the services prescribed pursuant to subsection (c)(1) of this section, and of the services specified as provided in clause (ii), which the Secretary may specify as appropriate for individuals who, within such period or periods as the Secretary may prescribe, have been or are likely to become applicants for or recipients of aid to the blind, if such services are requested by such individuals and are provided to such individuals in accordance with the next sentence, or

(iv) the training of personnel employed or preparing for employment by the State agency or by the local agency administering the plan in the political subdivision; plus

(B) one-half of so much of such expenditures (not included under subparagraph (A)) as are for services provided (in accordance with the next sentence) to applicants for or recipients of aid to the blind, and to individuals requesting such services who (within such period or periods as the Secretary may prescribe) have been or are likely to become applicants for or recipients of such aid; plus

(C) one-half of the remainder of such expenditures.

The services referred to in subparagraphs (A) and (B) shall, except to the extent specified by the Secretary, include only—

(D) services provided by the staff of the State agency, or of the local agency administering the State plan in the political subdivision: *Provided*, That no funds authorized under this subchapter shall be available for services defined as vocational rehabilitation services under the Vocational Rehabilitation Act (i) which are available to individuals in need of them under programs for their rehabilitation carried on under a State plan approved under such Act, or (ii) which the State agency or agencies administering or supervising the administration of the State plan approved under such Act are able and willing to provide if reimbursed for the cost thereof pursuant to agreement under subparagraph (E), if provided by such staff, and

(E) subject to limitations prescribed by the Secretary, services which in the judgment of the State agency cannot be as economically or as effectively provided by the staff of such State or local agency and are not otherwise reasonably available to individuals in need of them, and which are provided, pursuant to agreement with the State agency, by the State health authority or the State agency or agencies administering or supervising the administration of the State plan for vocational rehabilitation services approved under the Vocational Rehabilitation Act or by any other State agency which the Secretary may determine to be appropriate (whether provided by its staff or by contract with public (local) or nonprofit private agencies);

except that services described in clause (ii) of subparagraph (D) hereof may be provided only

pursuant to agreement with such State agency or agencies administering or supervising the administration of the State plan for vocational rehabilitation services so approved. The portion of the amount expended for administration of the State plan to which subparagraph (A) applies and the portion thereof to which subparagraphs (B) and (C) apply shall be determined in accordance with such methods and procedures as may be permitted by the Secretary; and

(4) in the case of any State whose State plan approved under section 1202 of this title does not meet the requirements of subsection (c) (1) of this section, an amount equal to one-half of the total of the sums expended during such quarter as found necessary by the Secretary for the proper and efficient administration of the State plan, including services referred to in paragraph (3) and provided in accordance with the provisions of such paragraph.

(b) The method of computing and paying such amounts shall be as follows:

(1) The Secretary of Health, Education, and Welfare shall, prior to the beginning of each quarter, estimate the amount to be paid to the State for such quarter under the provisions of subsection (a) of this section, such estimate to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of such subsection, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than the State's proportionate share of the total sum of such estimated expenditures, the source or sources from which the difference is

expected to be derived, (B) records showing the number of blind individuals in the State, and (C) such other investigation as the Secretary may find necessary.

(2) The Secretary of Health, Education, and Welfare shall then certify to the Secretary of the Treasury the amount so estimated by the Secretary of Health, Education, and Welfare, (A) reduced or increased, as the case may be, by any sum by which he finds that his estimate for any prior quarter was greater or less than the amount which should have been paid to the State under subsection (a) of this section for such quarter, and (B) reduced by a sum equivalent to the pro rata share to which the United States is equitably entitled, as determined by the Secretary of Health, Education, and Welfare, of the net amount recovered during a prior quarter by the State or any political subdivision thereof with respect to aid to the blind furnished under the State plan; except that such increases or reductions shall not be made to the extent that such sums have been applied to make the amount certified for any prior quarter greater or less than the amount estimated by the Secretary of Health, Education, and Welfare for such prior quarter: *Provided*, That any part of the amount recovered from the estate of a deceased recipient which is not in excess of the amount expended by the State or any political subdivision thereof for the funeral expenses of the deceased shall not be considered as a basis for reduction under clause (B) of this paragraph.

(3) The Secretary of the Treasury shall thereupon, through the Fiscal Service of the Treasury Department, and prior to audit or settlement by the General Accounting Office, pay to the State, at the time or times fixed by the Secretary of Health, Education, and Welfare, the amount so certified.

(c) (1) In order for a State to qualify for payments under paragraph (3) of subsection (a) of this section, its State plan approved under section 1202 of this title must provide that the State agency shall make available to applicants for or recipients of aid to the blind at least those services to help them attain or retain capability for self-support or self-care which are prescribed by the Secretary.

(2) In the case of any State whose State plan included a provision meeting the requirements of paragraph (1), but with respect to which the Secretary finds, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of such plan, that—

(A) the provision has been so changed that it no longer complies with the requirements of paragraph (1), or

(B) in the administration of the plan there is a failure to comply substantially with such provision,

the Secretary shall notify such State agency that further payments will not be made to the State under paragraph (3) of subsection (a) of this section until he is satisfied that there will no longer be any such failure to comply. Until the Secretary is so satisfied further payments with respect to the administration of such State plan shall not be made under paragraph (3) of subsection (a) of this section but shall instead be made, subject to the other provisions of this subchapter, under paragraph (4) of such subsection.

§ 1204. Operation of State plans

In the case of any State plan for aid to the blind which has been approved by the Secretary of Health, Education, and Welfare, if the Secretary, after reasonable notice and opportunity for hearing to the

State agency administering or supervising the administration of such plan, finds—

(1) that the plan has been so changed as to impose any residence or citizenship requirement prohibited by section 1202 (b) of this title, or that in the administration of the plan any such prohibited requirement is imposed, with the knowledge of such State agency, in a substantial number of cases; or

(2) that in the administration of the plan there is a failure to comply substantially with any provision required by section 1202 of this title to be included in the plan;

the Secretary shall notify such State agency that further payments will not be made to the State (or, in his discretion, that payments will be limited to categories under or parts of the State plan not affected by such failure) until the Secretary is satisfied that such prohibited requirement is no longer so imposed, and that there is no longer any such failure to comply. Until he is so satisfied he shall make no further payments to such State (or shall limit payments to categories under or parts of the State plan not affected by such failure.)

§ 1352. State plans for aid to the permanently and totally disabled

(a) A State plan for aid to the permanently and totally disabled must (1) provide that it shall be in effect in all political subdivisions of the State, and, if administered by them, be mandatory upon them; (2) provide for financial participation by the State; (3) either provide for the establishment or designation of a single State agency to administer the plan, or provide for the establishment or designation of a single State

agency to supervise the administration of the plan; (4) provide for granting an opportunity for a fair hearing before the State agency to any individual whose claim for aid to the permanently and totally disabled is denied or is not acted upon with reasonable promptness; (5) provide (A) such methods of administration (including methods relating to the establishment and maintenance of personnel standards on a merit basis except that the Secretary shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods) as are found by the Secretary to be necessary for the proper and efficient operation of the plan, and (B) for the training and effective use of paid subprofessional staff, with particular emphasis on the full-time or part-time employment or recipients and other persons of low income, as community service aides, in the administration of the plan and for the use of nonpaid or partially paid volunteers in a social service volunteer program in providing services to applicants and recipients and in assisting any advisory committees established by the State agency; (6) provide that the State agency will make such reports, in such form and containing such information, as the Secretary may from time to time require, and comply with such provisions as the Secretary may from time to time find necessary to assure the correctness and verification of such reports; (7) provide that no aid will be furnished any individual under the plan with respect to any period with respect to which he is receiving old-age assistance under the State plan approved under section 302 of this title, aid to families with dependent children under the State plan approved under section 602 of this title, or aid to the blind under the State plan approved under section 1202 of this title; (8) provide that the State agency shall, in determining need, take into consideration any other

income and resources of an individual claiming aid to the permanently and totally disabled, as well as any expenses reasonably attributable to the earning of any such income; except that, in making such determination, (A) the State agency may disregard not more than $7.50 of any income, (B) of the first $80 per month of additional income which is earned the State agency may disregard not more than the first $20 thereof plus one-half of the remainder, and (C) the State agency may, for a period not in excess of 36 months, disregard such additional amounts of other income and resources, in the case of an individual who has a plan for achieving self-support approved by the State agency, as may be necessary for the fulfillment of such plan, but only with respect to the part or parts of such period during substantially all of which he is actually undergoing vocational rehabilitation; (9) provide safeguards which restrict the use or disclosure of information concerning applicants and recipients to purposes directly connected with the administration of aid to the permanently and totally disabled; (10) provide that all individuals wishing to make application for aid to the permanently and totally disabled shall have opportunity to do so, and that aid to the permanently and totally disabled shall be furnished with reasonable promptness to all eligible individuals; (11) effective July 1, 1953, provide, if the plan includes payments to individuals in private or public institutions, for the establishment or designation of a State authority or authorities which shall be responsible for establishing and maintaining standards for such institutions; and (12) provide a description of the services (if any) which the State agency makes available to applicants for and recipients of aid to the permanently and totally disabled to help them attain self-support or self-care, including a description of the steps taken to assure, in the provision of such services, maximum utilization of other agencies providing similar or related services.

(b) The Secretary shall approve any plan which fulfills the conditions specified in subsection (a) of this section, except that he shall not approve any plan which imposes, as a condition of eligibility for aid to the permanently and totally disabled under the plan—

(1) Any residence requirement which excludes any resident of the State who has resided therein five years during the nine years immediately preceding the application for aid to the permanently and totally disabled and has resided therein continuously for one year immediately preceding the application;

(2) Any citizenship requirement which excludes any citizen of the United States.

§ 1353. Payments to States; computation of amounts

(a) From the sums appropriated therefor, the Secretary of the Treasury shall pay to each State which has an approved plan for aid to the permanently and totally disabled, for each quarter, beginning with the quarter commencing October 1, 1958—

(1) in the case of any State other than Puerto Rico, the Virgin Islands, and Guam, an amount equal to the sum of the following proportions of the total amounts expended during such quarter as aid to the permanently and totally disabled under the State plan (including expenditures for premiums under part B of subchapter XVIII of this chapter for individuals who are recipients of money payments under such plan and other insurance premiums for medical or any other type of remedial care or the cost thereof)—

(A) 31/37 of such expenditures, not counting so much of any expenditure with

respect to any month as exceeds the product of $37 multiplied by the total number of recipients of aid to the permanently and totally disabled for such month (which total number, for purposes of this subsection, means (i) the number of individuals who receive aid to the permanently and totally disabled in the form of money payments for such month, plus (ii) the number of other individuals with respect to whom expenditures were made in such month as aid to the permanently and totally disabled in the form of medical or any other type of remedial care); plus

(B) the Federal percentage of the amount by which such expenditures exceed the maximum which may be counted under clause (A), not counting so much of any expenditure with respect to any month as exceeds the product of $75 multiplied by the total number of such recipients of aid to the permanently and totally disabled for such month; and

(2) in the case of Puerto Rico, the Virgin Islands, and Guam, an amount equal to one-half of the total of the sums expended during such quarter as aid to the permanently and totally disabled under the State plan (including expenditures for premiums under part B of subchapter XVIII of this chapter for individuals who are recipients of money payments under such plan and other insurance premiums for medical or any other type of remedial care or the cost thereof), not counting so much of any expenditure with respect to any month as exceeds $37.50 multiplied by the total number of recipients of aid to the permanently and totally disabled for such month; and

(3) in the case of any State whose State plan approved under section 1352 of this title meets the requirements of subsection (c) (1) of this section, an amount equal to the sum of the following proportions of the total amounts expended during such quarter as found necessary by the Secretary of Health, Education, and Welfare for the proper and efficient administration of the State plan—

(A) 75 per centum of so much of such expenditures as are for—

(i) services which are prescribed pursuant to subsection (c) (1) of this section and are provided (in accordance with the next sentence) to applicants for or recipients of aid to the permanently and totally disabled to help them attain or retain capability for self-support or self-care, or

(ii) other services, specified by the Secretary as likely to prevent or reduce dependency, so provided to such applicants or recipients, or

(iii) any of the services prescribed pursuant to subsection (c) (1) of this section, and of the services specified as provided in clause (ii), which the Secretary may specify as appropriate for individuals who, within such period or periods as the Secretary may prescribe, have been or are likely to become applicants for or recipients of aid to the permanently and totally disabled, if such services are requested by such individuals and are provided to such individuals in accordance with the next sentence, or

(iv) the training of personnel employed or preparing for employment by the State agency or by the local agency administering the plan in the political subdivision; plus

(B) one-half of so much of such expenditures (not included under subparagraph (A)) as are for services provided (in accordance with the next sentence) to applicants for or recipients of aid to the permanently and totally disabled, and to individuals requesting such services who (within such period or periods as the Secretary may prescribe) have been or are likely to become applicants for or recipients of such aid; plus

(C) one-half of the remainder of such expenditures.

The services referred to in subparagraphs (A) and (B) shall, except to the extent specified by the Secretary, include only—

(D) services provided by the staff of the State agency, or of the local agency administering the State plan in the political subdivision: *Provided*, That no funds authorized under this subchapter shall be available for services defined as vocational rehabilitation services under the Vocational Rehabilitation Act (i) which are available to individuals in need of them under programs for their rehabilitation carried on under a State plan approved under such Act, or (ii) which the State agency or agencies administering or supervising the administration of the State plan approved under such Act are able and

willing to provide if reimbursed for the cost thereof pursuant to agreement under subparagraph (E), if provided by such staff, and

(E) subject to limitations prescribed by the Secretary, services which in the judgment of the State agency cannot be as economically or as effectively provided by the staff of such State or local agency and are not otherwise reasonably available to individuals in need of them, and which are provided, pursuant to agreement with the State agency, by the State health authority or the State agency or agencies administering or supervising the administration of the State plan for vocational rehabilitation services approved under the Vocational Rehabilitation Act or by any other State agency which the Secretary may determine to be appropriate (whether provided by its staff or by contract with public (local) or nonprofit private agencies);

except that services described in clause (ii) of subparagraph (D) hereof may be provided only pursuant to agreement with such State agency or agencies administering or supervising the administration of the State plan for vocational rehabilitation services so approved. The portion of the amount expended for administration of the State plan to which subparagraph (A) applies and the portion thereof to which subparagraphs (B) and (C) apply shall be determined in accordance with such methods and procedures as may be permitted by the Secretary; and

(4) in the case of any State whose State plan approved under section 1352 of this title does not meet the requirements of subsection (c) (1) of this

section, an amount equal to one-half of the total of the sums expended during such quarter as found necessary by the Secretary for the proper and efficient administration of the State plan, including services referred to in paragraph (3) and provided in accordance with the provisions of such paragraph.

(b) The method of computing and paying such amounts shall be as follows:

(1) The Secretary of Health, Education, and Welfare shall, prior to the beginning of each quarter, estimate the amount to be paid to the State for such quarter under the provisions of subsection (a) of this section, such estimate to be based on (A) a report filed by the State containing its estimate of the total sum to be expended in such quarter in accordance with the provisions of subsection (a) of this section, and stating the amount appropriated or made available by the State and its political subdivisions for such expenditures in such quarter, and if such amount is less than the State's proportionate share of the total sum of such estimated expenditures, the source or sources from which the difference is expected to be derived, (B) records showing the number of permanently and totally disabled individuals in the State, and (C) such other investigation as the Secretary may find necessary.

(2) The Secretary of Health, Education, and Welfare shall then certify to the Secretary of the Treasury the amount so estimated by the Secretary of Health, Education, and Welfare, (A) reduced or increased, as the case may be, by any sum by which he finds that his estimate for any prior quarter was greater or less than the amount which should have been paid to the State under subsection (a) of this

section for such quarter, and (B) reduced by a sum equivalent to the pro rata share to which the United States is equitably entitled as determined by the Secretary of Health, Education, and Welfare, of the net amount recovered during a prior quarter by the State or any political subdivision thereof with respect to aid to the permanently and totally disabled furnished under the State plan; except that such increases or reductions shall not be made to the extent that such sums have been applied to make the amount certified for any prior quarter greater or less than the amount estimated by the Secretary of Health, Education, and Welfare for such prior quarter: *Provided*, That any part of the amount recovered from the estate of a deceased recipient which is not in excess of the amount expended by the State or any political subdivision thereof for the funeral expenses of the deceased shall not be considered as a basis for reduction under clause (B) of this paragraph.

(3) The Secretary of the Treasury shall thereupon, through the Fiscal Service of the Treasury Department, and prior to audit or settlement by the General Accounting Office, pay to the State, at the time or times fixed by the Secretary of Health, Education, and Welfare, the amount so certified.

(c) (1) In order for a State to qualify for payments under paragraph (3) of subsection (a) of this section, its State plan approved under section 1352 of this title must provide that the State agency shall make available to applicants for or recipients of aid to the permanently and totally disabled at least those services to help them attain or retain capability for self-support or self-care which are prescribed by the Secretary.

(2) In the case of any State whose State plan included a provision meeting the requirements of paragraph (1), but with respect to which the Secretary finds, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of such plan, that—

(A) the provision has been so changed that it no longer complies with the requirements of paragraph (1), or

(B) in the administration of the plan there is a failure to comply substantially with such provision,

the Secretary shall notify such State agency that further payments will not be made to the State under paragraph (3) of subsection (a) of this section until he is satisfied that there will no longer be any such failure to comply. Until the Secretary is so satisfied further payments with respect to the administration of such State plan shall not be made under paragraph (3) of subsection (a) of this section but shall instead be made, subject to the other provisions of this subchapter, under paragraph (4) of such subsection.

§ 1354. Operation of State plans

In the case of any State plan for aid to the permanently and totally disabled which has been approved by the Secretary of Health, Education, and Welfare, if the Secretary after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of such plan, finds—

(1) that the plan has been so changed as to impose any residence or citizenship requirement prohibited by section 1352(b) of this title, or that in the administration of the plan any such prohibited requirement is imposed, with the knowledge of such State agency, in a substantial number of cases; or

(2) that in the administration of the plan there is a failure to comply substantially with any provision required by section 1352(a) of this title to be included in the plan;

the Secretary shall notify such State agency that further payments will not be made to the State (or, in his discretion, that payments will be limited to categories under or parts of the State plan not affected by such failure) until he is satisfied that such prohibited requirement is no longer so imposed, and that there is no longer any such failure to comply. Until he is so satisfied he shall make no further payments to such State (or shall limit payments to categories under or parts of the State plan not affected by such failure).

§ 1355. Definitions

For the purposes of this subchapter, the term "aid to permanently and totally disabled" means money payments to, or (if provided in or after the third month before the month in which the recipient makes application for aid) medical care in behalf of, or any type of remedial care recognized under State law in behalf of, needy individuals eighteen years of age or older who are permanently and totally disabled, but does not include any such payments to or care in behalf of any individual who is an inmate of a public institution (except as a patient in a medical institution) or any individual who is a patient in an institution for tuberculosis or mental diseases. Such term also includes payments which are not included within the meaning of such term under the preceding sentence, but which would be so included except that they are made on behalf of such a needy individual to another individual who (as determined in accordance with standards prescribed by the Secretary) is interested in or concerned with the welfare of such needy individual, but only with respect to a State whose State plan

approved under section 1352 of this title includes provision for—

(1) determination by the State agency that such needy individual has, by reason of his physical or mental condition, such inability to manage funds that making payments to him would be contrary to his welfare and, therefore, it is necessary to provide such aid through payments described in this sentence;

(2) making such payments only in cases in which such payments will, under the rules otherwise applicable under the State plan for determining need and the amount of aid to the permanently and totally disabled to be paid (and in conjunction with other income and resources), meet all the need of the individuals with respect to whom such payments are made;

(3) undertaking and continuing special efforts to protect the welfare of such individual and to improve, to the extent possible, his capacity for self-care and to manage funds;

(4) periodic review by such State agency of the determination under paragraph (1) to ascertain whether conditions justifying such determination still exist, with provision for termination of such payments if they do not and for seeking judicial appointment of a guardian or other legal representative, as described in section 1311 of this title, if and when it appears that such action will best serve the interests of such needy individual; and

(5) opportunity for a fair hearing before the State agency on the determination referred to in paragraph (1) for any individual with respect to whom it is made.

§ 1316. Administrative and judicial review of public assistance determinations

(a) (1) Whenever a State plan is submitted to the Secretary by a State for approval under subchapter I, X, XIV, XVI, or XIX of this chapter, or part A of subchapter IV of this chapter, he shall, not later than 90 days after the date the plan is submitted to him, make a determination as to whether it conforms to the requirements for approval under such subchapter. The 90-day period provided herein may be extended by written agreement of the Secretary and the affected State.

(2) Any State dissatisfied with a determination of the Secretary under paragraph (1) with respect to any plan may, within 60 days after it has been notified of such determination, file a petition with the Secretary for reconsideration of the issue of whether such plan conforms to the requirements for approval under such subchapter. Within 30 days after receipt of such a petition, the Secretary shall notify the State of the time and place at which a hearing will be held for the purpose of reconsidering such issue. Such hearing shall be held not less than 20 days nor more than 60 days after the date notice of such hearing is furnished to such State, unless the Secretary and such State agree in writing to holding the hearing at another time. The Secretary shall affirm, modify, or reverse his original determination within 60 days of the conclusion of the hearing.

(3) Any State which is dissatisfied with a final determination made by the Secretary on such a reconsideration or a final determination of the Secretary under section 304, 604, 1204, 1354, 1384, or 1396c of this title may, within 60 days after it has been notified of such determination, file with the United States court of appeals for the circuit in which such State is located a petition for review of such determination. A copy of the petition shall be forthwith

transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings on which he based his determination as provided in section 2112 of Title 28.

(4) The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive; but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify his previous action, and shall certify to the court the transcript and record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

(5) The court shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of Title 28.

(b) For the purposes of subsection (a) of this section, any amendment of a State plan approved under subchapter I, X, XIV, XVI, or XIX of this chapter, or part A of subchapter IV of this chapter, may, at the option of the State, be treated as the submission of a new State plan.

(c) Action pursuant to an initial determination of the Secretary described in subsection (a) of this section shall not be stayed pending reconsideration, but in the even that the Secretary subsequently determines that his initial determination was incorrect he shall certify restitution forthwith in a lump sum of any funds incorrectly withheld or otherwise denied.

(d) Whenever the Secretary determines that any item or class of items on account of which Federal

financial participation is claimed under subchapter I, X, XIV, XVI, or XIX of this chapter, or part A of subchapter IV of this chapter, shall be disallowed for such participation, the State shall be entitled to and upon request shall receive a reconsideration of the disallowance.

PART 201—GRANTS TO STATES FOR PUBLIC ASSISTANCE PROGRAMS

Sec.
201.1 General.

Subpart A—Approval of State Plans and Certification of Grants

201.2 General definitions.
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201.4 Administrative review of certain administrative decisions.
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201.10 Review of State and local administration.
201.11 Personnel merit system review.
201.12 Public assistance audits.
201.13 Action on audit and review findings.

AUTHORITY: The provisions of this Part 201 issued under sec. 1102, 49 Stat. 647; 42 U.S.C. 1302.

SOURCE: The provisions of this Part 201 appear at 35 F.R. 12180, July 29, 1970, unless otherwise noted.

§ 201.1 General definitions.

When used in this chapter, unless the context otherwise indicates:

(a) "Act" means the Social Security Act, and titles referred to are titles of that Act;

(b) "Department" means the Department of Health, Education, and Welfare;

(c) "Administrator" means the Administrator, Social and Rehabilitation Service;

(d) "Secretary" means the Secretary of Health, Education, and Welfare;

(e) "Service" means the Social and Rehabilitation Service in the Department;

(f) "Regional Commissioner" means the Regional Commissioner of the Social and Rehabilitation Service;

(g) "State" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, and Guam;

(h) "State agency" means the State agency administering or supervising the administration of the State plan under title I, IV-A, X, XIV, XVI, or XIX of the Act;

(i) The terms "regional office" and "central office" refer to the regional offices and the central office of the Social and Rehabilitation Service, respectively.

Subpart A—Approval of State Plans and Certification of Grants

§ 201.2 General.

The State plan is a comprehensive statement submitted by the State agency describing the nature and scope of its program and giving assurance that it will be administered in conformity with the specific requirements stipulated in the pertinent title of the Act, the regulations in Subtitle A and this chapter of this title, and other applicable official issuances of the Department. The State plan contains all information necessary for the Service to determine whether the plan can be approved, as a basis for Federal financial participation in the State program.

§ 201.3 Approval of State plans and amendments.

The State plan consists of written documents furnished by the State to cover each of its programs under the Act: Old-age assistance (title I); aid and services to needy families with children (part A of title IV); aid to the blind (Title X); aid to the permanently and totally disabled (title XIV); aid to the aged, blind or disabled (title XVI); or medical assistance (title XIX). The State may submit the common material on more than one program as an integrated plan. However, it must identify the provisions pertinent to each title since a separate plan must be approved for each public assistance title. A plan submitted under title XVI encompasses, under a single plan, the programs otherwise covered by three separate plans under titles I, X, and XIV. After approval of the original plan by the Service, all relevant changes, required by new statutes, rules, regulations, interpretations, and court decisions, are required to be submitted currently so that the Service may determine whether the plan continues to meet Federal requirements and policies.

(a) *Submittal.* State plans and revisions of the plans are submitted first to the State governor or his designee for review in accordance with § 204.1 of this chapter, and then to the regional office. The States are encouraged to obtain consultation of the regional staff when a plan is in process of preparation or revision.

(b) *Review.* Staff in the regional offices are responsible for review of State plans and amendments. They also initiate discussion with the State agency on clarification of significant aspects of the plan which come to their attention in the course of this review. State plan material on which the regional staff has questions concerning the application of Federal policy is referred with recommendations as required to the central office for technical assistance. Comments and suggestions,

including those of consultants in specified areas, may be prepared by the central office for use by the regional staff in negotiations with the State agency.

(c) *Action.* The Regional Commissioner exercises delegated authority to take affirmative action on State plans and amendments thereto on the basis of policy statements or precedents previously approved by the Administrator. The Administrator retains authority for determining that proposed plan material is not approvable, or that a previously approved plan no longer meets the requirements for approval, except that a final determination of disapproval may not be made without prior consultation and discussion by the Administrator with the Secretary. The Regional Commissioner or the Administrator formally notifies the State agency of the actions taken on State plans or revisions.

(d) *Basis for approval.* Determinations as to whether State plans (including plan amendments and administrative practice under the plans) originally meet, or continue to meet, the requirements for approval are based on relevant Federal statutes and regulations. Guidelines are furnished to assist in the interpretation of the regulations.

(e) *Prompt approval of State plans.* Pursuant to section 1116 of the Act, the determination as to whether a State plan submitted for approval conforms to the requirements for approval under the Act and regulations issued pursuant thereto shall be made promptly and not later than the 90th day following the date on which the plan submittal is received in the regional office, unless the Regional Commissioner has secured from the State agency a written agreement to extend that period.

(f) *Prompt approval of plan amendments.* Any amendment of an approved State plan may, at the option

of the State, be considered as a submission of a new State plan. If the State requests that such amendment be so considered, the determination as to its conformity with the requirements for approval shall be made promptly and not later than the 90th day following the date on which such a request is received in the regional office with respect to an amendment that has been received in such office, unless the Regional Commissioner has secured from the State agency a written agreement to extend that period. In absence of request by a State that an amendment of an approved State plan shall be considered as a submission of a new State plan, the procedures under § 201.6 (a) and (b) shall be applicable.

(g) *Effective date.* The effective date of a new plan may not be earlier than the first day of the calendar quarter in which an approvable plan is submitted, and, with respect to expenditures for assistance under such plan, may not be earlier than the first day on which the plan is in operation on a statewide basis. The same applies with respect to plan amendments that provide additional assistance or services to persons eligible under the approved plan or that make new groups eligible for assistance or services provided under the approved plan. For other plan amendments the effective date shall be as specified in other sections of this chapter.

§ 201.4 Administrative review of certain administrative decisions.

Pursuant to section 1116 of the Act, any State dissatisfied with a determination of the Administrator pursuant to § 201.3 (e) or (f) with respect to any plan or amendment may, within 60 days after the date of receipt of notification of such determination, file a petition with the Regional Commissioner asking the Administrator for reconsideration of the issue of whether such plan or amendment conforms to the requirements for approval under the Act and pertinent Federal requirements.

Within 30 days after receipt of such a petition, the Administrator shall notify the State of the time and place at which the hearing for the purpose of reconsidering such issue will be held. Such hearing shall be held not less than 30 days nor more than 60 days after the date notice of such hearing is furnished to the State, unless the Administrator and the State agree in writing on another time. For hearing procedures, see Part 213 of this chapter. A determination affirming, modifying, or reversing the Administrator's original decision will be made within 60 days of the conclusion of the hearing. Action pursuant to an initial determination by the Administrator described in such § 201.3 (e) or (f) that a plan or amendment is not approvable shall not be stayed pending the reconsideration, but in the event that the Administrator subsequently determines that his original decision was incorrect he shall certify restitution forthwith in a lump sum of any funds incorrectly withheld or otherwise denied.

§ 201.5 Grants.

To States with approved plans, grants are made each quarter for expenditures under the plan for assistance, services, training and administration. The determination as to the amount of a grant to be made to a State is based upon documents submitted by the State agency containing information required under the Act and such other pertinent facts as may be found necessary.

(a) *Form and manner of submittal.* (1) Time and Place: The estimates for public assistance grants for each quarterly period must be forwarded to the regional office 45 days prior to the period of the estimate. They include a certification of State funds available and a justification statement in support of the estimates. A statement of quarterly expenditures and any necessary supporting schedules must be forwarded to the

Department of Health, Education, and Welfare, Social and Rehabilitation Service, Attention: Finance Division, Washington, D.C. 20201, not later than 30 days after the end of the quarter.

(2) Description of forms: "State Agency Expenditure Projection—Quarterly Projection by Program" represents the State agency's estimate of the total amount and the Federal share of expenditures for assistance, services, training, and administration to be made during the quarter for each of the public assistance programs under the Act. From these estimates the State and Federal shares of the total expenditures are computed. The State's computed share of total estimated expenditures is the amount of State and local funds necessary for the quarter. The Federal share is the basis for the funds to be advanced for the quarter. The State agency must also certify, on this form or otherwise, the amount of State funds (exclusive of any balance of advances received from the Federal Government) actually on hand and available for expenditure; this certification must be signed by the executive officer of the State agency submitting the estimate or a person officially designated by him, or by a fiscal officer of the State if required by State law or regulation. (A form "Certificate of Availability of State Funds for Assistance and Administration during Quarter" is available for submitting this information, but its use is optional.) If the amount of State funds (or State and local funds if localities participate in the program), shown as available for expenditures is not sufficient to cover the State's proportionate share of the amount estimated to be expended, the certification must contain a statement showing the source from which the amount of the deficiency is expected to be derived and the time when this amount is expected to be made available.

(3) The State agency must also submit a quarterly statement of expenditures for each of the public assistance programs under the Act. This is an accounting statement of the disposition of the Federal funds granted for past periods and provides the basis for making the adjustments necessary when the State's estimate for any prior quarter was greater or less than the amount the State actually expended in that quarter. The statement of expenditures also shows the share of the Federal Government in any recoupment, from whatever source, of expenditures claimed in any prior period, and also in expenditures not properly subject to Federal financial participation which are acknowledged by the State agency or have been revealed in the course of an audit.

(b) *Review.* The State's estimates are analyzed by the regional office staff and are forwarded with recommendations as required to the central office. The central office reviews the State's estimate, other relevant information, and any adjustments to be made for prior periods, and computes the grant.

(c) *Grant award.* The grant award computation form shows, by program, the amount of the estimate for the ensuing quarter, and the amounts by which the estimate is reduced or increased because of over—or under-estimate for the prior quarter and for other adjustments. This form is transmitted to the State agency to draw the amount of the grant award, as needed, to meet the Federal share of disbursements. The draw is through a commercial bank and the Federal Reserve system against a continuing letter of credit certified to the Secretary of the Treasury in favor of the State payee. A copy of the grant award notice is sent to the State Central Information Reception Agency in accord with section 201 of the Intergovernmental Cooperation Act of 1968.

(d) *Letter of credit payment system.* The letter of credit system for payment of advances of Federal funds was established pursuant to Treasury Department regulations (Circular No. 1075), published in the FEDERAL REGISTER on July 11, 1967 (32 F.R. 10201). The HEW "Instructions to Recipient Organizations for Use of Letter of Credit" was transmitted to all grantees by memorandum from the Assistant Secretary-Comptroller on January 15, 1968.

§ 201.6 Withholding of payment; reduction of Federal financial participation in the costs of social services and training.

(a) *When withheld.* Further payments to a State are withheld in whole or in part if the Administrator, after reasonable notice and opportunity for hearing to the State agency administering or supervising the administration of an approved plan, finds:

(1) That the plan no longer complies with the provisions of section 2, 402, 1002, 1402, 1602, or 1902 of the Act; or

(2) That in the administration of the plan there is failure to comply substantially with any such provision.

A question of noncompliance of a State plan may arise from an unapprovable change in the approved State plan, the failure of the State to change its approved plan to conform to a new Federal requirement for approval of State plans, or the failure of the State in practice to comply with a Federal requirement, whether or not its State plan has been amended to conform to such requirement.

(b) *When the rate of Federal financial participation is reduced.* Under title I, X, XIV, or XVI of the Act, Federal financial participation in the costs of social services and training approved at the rate of 75 per

centum is reduced to 50 per centum if the Administrator, after reasonable notice and opportunity for a hearing to the State agency, finds:

(1) That the plan provision under such title for prescribed services no longer complies with the Federal requirements with respect to such prescribed services; or

(2) That in the administration of the plan there is a failure to comply substantially with such plan provision.

(c) *Information discussions.* Hearings with respect to matters under paragraph (a) or (b) of this section are generally not called, however, until after reasonable effort has been made by the Service to resolve the questions involved by conference and discussion with State officials. Formal notification of the date and place of hearing does not foreclose further negotiations with State officials.

(d) *Conduct of hearings.* For hearing procedures, see Part 213 of this chapter.

(e) *Notification of withholding.* If the Administrator makes a finding of noncompliance with respect to a matter under paragraph (a) of this section, the State agency is notified that further payments will not be made to the State (or, in his discretion, that payments will be limited to categories under or parts of the plan not affected by such failure), until the Administrator is satisfied that there will no longer be any such failure to comply. Until he is so satisfied, no further payments will be made to the State (or will be limited to categories under or parts of the plan not affected by such failure).

(f) *Notification of reduction in the rate of Federal financial participation.* If the Administrator makes a finding of noncompliance with respect to a matter under paragraph (b) of this section, the State agency is notified

that further payments will be made to the State at the rate of 50 per centum of the costs of services and training, until the Administrator is satisfied that there will no longer be any failure to comply.

§ 201.7 Judicial review.

Any State dissatisfied with a final determination of the Secretary pursuant to § 201.4 or § 201.6(a) may, within 60 days after it has been notified of such determination, file with the U.S. Court of Appeals for the circuit in which such State is located a petition for review of such determination. After a copy of the petition is transmitted by the clerk of the court to the Secretary, the Secretary thereupon shall file in the court the record of proceedings upon which such determination was based as provided in section 2112 of title 28, United States Code. The court is bound by the Secretary's findings of fact, if supported by substantial evidence. The court has jurisdiction to affirm the Secretary's decision, or set it aside in whole or in part, or, for good cause, to remand the case for additional evidence. If the case is remanded, the Secretary may thereupon make new or modified findings of fact, and may modify his previous determination. The Secretary shall certify to the court the transcript and record of the further proceedings. The judgment of the court is subject to review by the Supreme Court of the United States upon certiorari or certification as provided in 28 U.S.C. 1254.

Subpart B—Review and Audits

§ 201.10 Review of State and local administration.

(a) In order to provide a basis for determining that State agencies are adhering to Federal requirements and to the substantive legal and administrative provisions of their approved plans, the Service conducts a review of State and local public assistance

administration. This review includes analysis of procedures and policies of State and local agencies and examination of case records of individual recipients.

(b) Each State agency is required to carry out a continuing quality control program primarily covering determination of eligibility in statistically selected samples of individual cases. The Service conducts a continuing observation of these State systems.

(c) Adherence to other Federal requirements set forth in the pertinent titles of the Act and the regulations in this title is evaluated through review of selected case records and aspects of agency operations.

§ 201.11 Personnel merit system review.

A personnel merit system review is carried out by the Office of State Merit Systems of the Office of the Assistant Secretary for Administration of the Department. The purpose of the review is to evaluate the effectiveness of the State merit system relating to the public assistance programs and to determine whether there is compliance with Federal requirements in the administration of the merit system plan. See Part 70 of this title.

§ 201.12 Public assistance audits.

(a) Annually, or at such frequencies as are considered necessary and appropriate, the operations of the State agency are audited by representatives of the Audit Agency of the Department. Such audits are made to determine whether the State agency is being operated in a manner that

(1) Encourages prudent use of program funds, and

(2) Provides a reasonable degree of assurance that funds are being properly expended, and for the purposes for which appropriated and provided for

under the related Act and State plan, including State laws and regulations.

(b) Reports of these audits are released by the Audit Agency simultaneously to program officials of the Department, and to the cognizant State officials. These audit reports relate the opinion of the Audit Agency on the practices reviewed and the allowability of costs audited at the State agency. Final determinations as to actions required on all matters reported are made by cognizant officials of the Department.

§ 201.13 Action on audit and review findings.

(a) If the audit results in no exceptions, the State agency is advised by letter of this result. The general course for the disposition of proposed exceptions resulting from audits involves the submittal of details of these exceptions to the State agency which then has an opportunity to concur in the proposed exceptions or to assemble and submit additional facts for purposes of clearance. Provision is made for the State agency to appeal proposed audit exceptions in which it has not concurred and which have not been deleted on the basis of clearance material. After consideration of a State agency's appeal by the Administrator, the Service advises the State agency of any expenditures in which the Federal Government may not participate and requests it to include the amount as adjustments in a subsequent statement of expenditures. Expenditures in which it is found the Federal Government may not participate and which are not properly adjusted through the State's claim will be deducted from subsequent grants made to the State agency.

(b) If the Federal or State reviews reveal serious problems with respect to compliance with any Federal requirement, the State agency is required to correct its practice so that there will be no recurrence of the

problem in the future, and the procedures under this part relating thereto, in connection with reception and temporary assistance under the Act.

PART 213—PRACTICE AND PROCEDURE FOR HEARINGS TO STATES ON CONFORMITY OF PUBLIC ASSISTANCE PLANS TO FEDERAL REQUIREMENTS

Subpart A—General

Sec.

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213.2 Records to be public.
213.3 Use of gender and number.
213.4 Suspension of rules.
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Subpart B—Preliminary Matters—Notice and Parties

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213.12 Time of hearing.
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Subpart C—Hearing Procedures

213.21 Who presides.
213.22 Authority of presiding officer.
213.23 Rights of parties.
213.24 Evidentiary purpose.
213.25 Evidence.
213.26 Exclusion from hearing for misconduct.
213.27 Unsponsored written material.
213.28 Official transcript.
213.29 Record for decision.

Subpart D—Posthearing Procedures, Decisions

213.31 Posthearing briefs.
213.32 Decisions following hearing.
213.33 Effective date of Administrator's decision.

AUTHORITY: The provisions of this Part 213 issued under sec. 1102, 49 Stat. 647; 42 U.S.C. 1302.

SOURCE: The provisions of this Part 213 appear at 36 F.R. 1454, Jan. 29, 1971, unless otherwise noted.

Subpart A—General

§ 213.1 Scope of rules.

(a) The rules of procedure in this part govern the practice for hearings afforded by the Department to States pursuant to § 201.4 or § 201.6(a) or (b) of this chapter, and the practice relating to decisions upon such hearings. These rules may also be applied to hearings afforded by the Department to States in other Federal-State programs for which Federal administrative responsibility has been delegated to the Service.

(b) Nothing in this part is intended to preclude or limit negotiations between the Department and the State, whether before, during, or after the hearing, to resolve the issues which are, or otherwise would be, considered at the hearing. Such negotiations and resolution of issues are not part of the hearing, and are not governed by the rules in this part, except as expressly provided herein.

§ 213.2 Records to be public.

All pleadings, correspondence, exhibits, transcripts of testimony, exceptions, briefs, decisions, and other documents filed in the docket in any proceeding may be inspected and copied in the office of the SRS Hearing

Clerk. Inquiries may be made at the Central Information Center, Department of Health, Education, and Welfare, 3300 Independence Avenue S.W., Washington, DC 20201.

§ 213.3 Use of gender and number.

As used in this part, words importing the singular number may extend and be applied to several persons or things, and vice versa. Words importing the masculine gender may be applied to females or organizations.

§ 213.4 Suspension of rules.

Upon notice to all parties, the Administrator or the presiding officer, with respect to matters pending before him and within his jurisdiction, may modify or waive any rule in this part upon determination that no party will be unduly prejudiced and the ends of justice will thereby be served.

§ 213.5 Filing and service of papers.

(a) All papers in the proceedings shall be filed with the SRS Hearing Clerk, in an original and two copies. Originals only of exhibits and transcripts of testimony need be filed.

(b) All papers in the proceedings shall be served on all parties by personal delivery or by mail. Service on the party's designated attorney will be deemed service upon the party.

Subpart B—Preliminary Matters—Notice and Parties

§ 213.11 Notice of hearing or opportunity for hearing.

Proceedings are commenced by mailing a notice of hearing or opportunity for hearing from the

Administrator to the State. The notice shall state the time and place for the hearing, and the issues which will be considered, and shall be published in the FEDERAL REGISTER.

§ 213.12 Time of hearing.

The hearing shall be scheduled not less than 30 days nor more than 60 days after the date notice of the hearing is furnished to the State.

§ 213.13 Place.

The hearing shall be held in the city in which the regional office of the Department is located or in such other place as is fixed by the Administrator in light of the circumstances of the case, with due regard for the convenience and necessity of the parties or their representatives.

§ 213.14 Issues at hearing.

(a) The Administrator may, prior to a hearing under § 201.6(a) or (b) of this chapter, notify the State in writing of additional issues which will be considered at the hearing, and such notice shall be published in the FEDERAL REGISTER. If such notice is furnished to the State less than 20 days before the date of the hearing, the State or any other party, at its request, shall be granted a postponement of the hearing to a date 20 days after such notice was furnished, or such later date as may be agreed to by the Administrator.

(b) If, as a result of negotiations between the Department and the State, the submittal of a plan amendment, a change in the State program, or other actions by the State, any issue is resolved in whole or in part, but new or modified issues are presented, as specified by the Administrator, the hearing shall proceed on such new or modified issues.

(c)(1) If at any time, whether prior to, during, or after the hearing, the Administrator finds that the State has come into compliance with Federal requirements on any issue, in whole or in part, he shall remove such issue from the proceedings in whole or in part, as may be appropriate. If all issues are removed, he shall terminate the hearing.

(2) Prior to the removal of any issue from the hearing, in whole or in part, the Administrator shall provide all parties other than the Department and the State (see § 213.15(b)) with the statement of his intention, and the reasons therefor, and a copy of the proposed State plan provision on which the State and he have settled, and the parties shall have opportunity to submit in writing within 15 days, for the Administrator's consideration and for the record, their views as to, or any information bearing upon, the merits of the proposed plan provision and the merits of the Administrator's reasons for removing the issue from the hearing.

(d) The issues considered at the hearing shall be limited to those issues of which the State is notified as provided in § 213.11 and paragraph (a) of this section, and new or modified issues described in paragraph (b) of this section, and shall not include issues or parts of issues removed from the proceedings pursuant to paragraph (c) of this section.

§ 213.15 Request to participate in hearing.

(a) The Department and the State are parties to the hearing without making a specific request to participate.

(b) (1) Other individuals or groups may be recognized as parties, if the issues to be considered at the hearing have caused them injury and their interest is within the zone of interests to be protected by the governing Federal statute.

(2) Any individual or group wishing to participate as a party shall file a petition with the SRS Hearing Clerk within 15 days after notice of the hearing has been published in the FEDERAL REGISTER, and shall serve a copy on each party of record at that time, in accordance with § 213.5(b). Such petition shall concisely state (i) petitioner's interest in the proceedings, (ii) who will appear for petitioner, (iii) the issues on which petitioner wishes to participate, and (iv) whether petitioner intends to present witnesses.

(3) Any party may, within 5 days of receipt of such petition, file comments thereon.

(4) The presiding officer shall promptly determine whether each petitioner has the requisite interest in the proceedings and shall permit or deny participation accordingly. Where petitions to participate as parties are made by individuals or groups with common interests, the presiding officer may request all such petitioners to designate a single representative, or he may recognize one or more of such petitioners to represent all such petitioners. The presiding officer shall give each petitioner written notice of the decision on his petition, and if the petition is denied, he shall briefly state the grounds for denial.

(c) (1) Any interested person or organization wishing to participate as amicus curiae shall file a petition with the SRS Hearing Clerk before the commencement of the hearing. Such petition shall concisely state (i) the petitioner's interest in the hearing, (ii) who will represent the petitioner, and (iii) the issues on which petitioner intends to present argument. The presiding officer may grant the petition if he finds that the petitioner has a legitimate interest in the proceedings, that such participation will not unduly delay the

outcome and may contribute materially to the proper disposition of the issues. An amicus curiae is not a party but may participate as provided in the paragraph.

(2) An amicus curiae may present a brief oral statement at the hearing, at the point in the proceedings specified by the presiding officer. He may submit a written statement of position to the presiding officer prior to the beginning of a hearing, and shall serve a copy on each party. He may also submit a brief or written statement at such time as the parties submit briefs, and shall serve a copy on each party.

Subpart C—Hearing Procedures

§ 213.21 Who presides.

(a) The presiding officer at the hearing shall be the Administrator or, at his discretion a hearing examiner assigned under 5 U.S.C. 3105 or 3344.

(b) The designation of the presiding officer shall be in writing. A copy of the designation shall be served on all parties.

§ 213.22 Authority of presiding officer.

(a) The presiding officer shall have the duty to conduct a fair hearing, to avoid delay, maintain order, and make a record of the proceedings. He shall have all powers necessary to accomplish these ends, including, but not limited to, the power to:

(1) Change the date, time, and place of the hearing, upon due notice to the parties. This includes the power to continue the hearing in whole or in part. In hearings pursuant to section 1116(a) (2) of the Social Security Act (see § 201.4 of this chapter), changes of time are subject to the requirements of the statute.

(2) Hold conferences to settle or simplify the issues in a proceeding, or to consider other matters that may aid in the expeditious disposition of the proceeding.

(3) Regulate participation of parties and amici curiae and require parties and amici curiae to state their position with respect to the various issues in the proceeding.

(4) Administer oaths and affirmations.

(5) Rule on motions and other procedural items on matters pending before him.

(6) Regulate the course of the hearing and conduct of counsel therein.

(7) Examine witnesses.

(8) Receive, rule on, exclude or limit evidence.

(9) Fix the time for filing motions, petitions, briefs, or other items in matters pending before him.

(10) If the presiding officer is the Administrator, make a final decision.

(11) If the presiding officer is a hearing examiner, certify the entire record including his recommended findings and proposed decision to the Administrator.

(12) Take any action authorized by the rules in this part or in conformance with the provisions of 5 U.S.C. 551-559.

(b) The presiding officer does not have authority to compel by subpoena the production of witnesses, papers, or other evidence.

(c) If the presiding officer is a hearing examiner, his authority pertains to the issues of compliance by a State

with Federal requirements which are to be considered at the hearing, and does not extend to the question of whether, in case of any noncompliance, Federal payments will not be made in respect to the entire State plan or will be limited to categories under or parts of the State plan affected by such noncompliance.

§ 213.23 Right of parties.

All parties may:

(a) Appear by counsel or other authorized representative, in all hearing proceedings.

(b) Participate in any prehearing conference held by the presiding officer.

(c) Agree to stipulations as to facts which will be made a part of the record.

(d) Make opening statements at the hearing.

(e) Present relevant evidence on the issues at the hearing.

(f) Present witnesses who then must be available for cross-examination by all other parties.

(g) Present oral arguments at the hearing.

(h) Submit written briefs, proposed findings of fact, and proposed conclusions of law, after the hearing.

§ 213.24 Evidentiary purpose.

The hearing is directed to receiving factual evidence and expert opinion testimony related to the issues in the proceeding. Argument will not be received in evidence; rather it should be presented in statements, memoranda, or briefs, as determined by the presiding officer. Brief opening statements, which shall be limited to statement of the party's position and what he intends to prove, may be made at hearings.

§ 213.25 Evidence.

(a) *Testimony.* Testimony shall be given orally under oath or affirmation by witnesses at the hearing. Witnesses shall be available at the hearing for cross-examination by all parties.

(b) *Stipulations and exhibits.* Two or more parties may agree to stipulations of fact. Such stipulations, or any exhibit proposed by any party, shall be exchanged at the prehearing conference or otherwise prior to the hearing if the presiding officer so requires.

(c) *Rules of evidence.* Technical rules of evidence shall not apply to hearings conducted pursuant to this part, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by the presiding officer. A witness may be cross-examined on any matter material to the proceeding without regard to the scope of his direct examiniation. The presiding officer may exclude irrelevant, immatrial, or unduly repetitious evidence. All documents and other evidence offered or taken for the record shall be open to examination by the parties and opportunity shall be given to refute facts and arguments advanced on either side of the issues.

§ 213.26 Exclusion from hearing for misconduct.

Disrespectful, disorderly, or contumacious language or contemptuous conduct, refusal to comply with directions, or continued use of dilatory tactics by any person at the hearing before a presiding officer shall constitute grounds for immediate exclusion of such person from the hearing by the presiding officer.

§ 213.27 Unsponsored written material.

Letters expressing views or urging action and other unsponsored written material regarding matters in

issue in a hearing will be placed in the correspondence section of the docket of the proceeding. These data are not deemed part of the evidence or record in the hearing.

§ 213.28 Official transcript.

The Department will designate the official reporter for all hearings. The official transcripts of testimony taken, together with any stipulations, exhibits, briefs, or memoranda of law filed therewith shall be filed with the Department. Transcripts of testimony in hearings may be obtained from the official reporter by the parties and the public at rates not to exceed the maximum rates fixed by the contract between the Department and the reporter. Upon notice to all parties, the presiding officer may authorize corrections to the transcript which involve matters of substance.

§ 213.29 Record for decision.

The transcript of testimony, exhibits, and all papers and requests filed in the proceedings, except the correspondence section of the docket, including rulings and any recommended or initial decision shall constitute the exclusive record for decision.

Subpart D—Posthearing Procedures, Decisions

§ 213.31 Posthearing briefs.

The presiding officer shall fix the time for filing posthearing briefs, which may contain proposed findings of fact and conclusions of law, and, if permitted, reply briefs.

§ 213.32 Decisions following hearing.

(a) If the Administrator is the presiding officer, he shall, when the time for submission of posthearing briefs has expired, issue his decision within 60 days.

(b) (1) If a hearing examiner is the presiding officer, he shall, when the time for submission of posthearing briefs has expired, certify the entire record, including his recommended findings and proposed decision, to the Administrator. The Administrator shall serve a copy of the recommended findings and proposed decision upon all parties, and amici, if any.

(2) Any party may, within 20 days, file with the Administrator exceptions to the recommended findings and proposed decision and a supporting brief or statement.

(3) The Administrator shall thereupon review the recommended decision and, within 60 days of its issuance, issue his own decision.

(c) If the Administrator concludes that a State plan does not comply with Federal requirements, he shall also, in the case of a hearing pursuant to § 201.6 (a) of this chapter, specify whether further payments will not be made to the State or whether, in the exercise of his discretion, payments will be limited to categories under or parts of the State plan not affected by such noncompliance. The Administrator may ask the parties for recommendations or briefs or may hold conferences of the parties on this question.

(d) The decision of the Administrator under this section shall be the final decision of the Secretary and shall constitute "final agency action" within the meaning of 5 U.S.C. 704 and a "final determination" within the meaning of section 1116(a) (3) of the Act and § 201.7 of this chapter. The Administrator's decision shall be promptly served on all parties, and amici, if any.

[36 F.R. 1454, Jan. 29, 1971, as amended at 36 F.R. 21520, Nov. 10, 1971]

§ 213.33 Effective date of Administrator's decision.

If, in the case of a hearing pursuant to § 201.6(a) of this chapter, the Administrator concludes that a State plan does not comply with Federal requirements, his decision that further payments will not be made to the State, or payments will be limited to categories under or parts of the State plan not affected, shall specify the effective date for the withholding of Federal funds. The effective date shall not be earlier than the date of the Administrator's decision and shall not be later than the first day of the next calendar quarter. The provisions of this section may not be waived pursuant to § 213.4.

PART 220—SERVICE PROGRAMS FOR FAMILIES AND CHILDREN; TITLE IV PARTS A AND B OF SOCIAL SECURITY ACT

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AUTHORITY: The provisions of this Part 220 issued under sec. 1102, 49 stat. 647; 42 U.S.C. 1302.

SOURCE: The provisions of this Part 220 appear at 34 F.R. 1354, Jan. 28, 1969, unless otherwise noted.

Subpart A—Mandatory Provisions

§ 220.1 General.

The State plans for AFDC and CWS pursuant to title IV, parts A and B of the Social Security Act must, with respect to the administration of the service programs for families and children,

(a) Contain provisions committing the State to meet the requirements in this subpart;

(b) Contain provisions committing the State to progress in the extension and improvement of services;

(c) Indicate the steps to be taken to meet the requirements; and

(d) Provide for the submission of such implementation and progress reports as may be specified.

ORGANIZATION AND ADMINISTRATION

§ 220.2 Single organizational unit.

(a) There must be a single organizational unit, within the single State agency, at the State level and also at the

local level to provide or supervise all services to families and children included in the State plan for title IV, parts A and B. Within the single organizational unit the same subunits must be responsible for setting service policies and furnishing services for both AFDC and CWS cases. Specific services may be delegated within the agency for services common to other groups (e.g., homemaker service for the aged), provided that this does not tend to create differences in the quality of services for AFDC and CWS cases. (This requirement does not apply to States where the AFDC and CWS programs were administered by separate agencies on Jan. 2, 1968.)

(b) Such unit must, under the direction of its chief officer (who, at the State level, is not the head of the State agency), be responsible for:

(1) Development of policy and the maintenance of policy control for all parts of the service program.

(2) Direct program supervision of the local agency or otherwise be in a position to assure proper program implementation.

(c) The State plan must also include the structure of such unit and show its place in the overall welfare agency and the distribution of responsibilities among the major divisions within the unit.

§ 220.3 Full-time staff for services.

(a) The functions of arranging or providing services to individuals should, to the maximum extent feasible, be performed by persons other than those who determine eligibility for financial and medical assistance and provide financial assistance.

(b) There must be adequate numbers of full-time staff assigned to service functions at all levels of agency operations and, to this end, there must be progress

toward the objective of relieving all staff of nonservice functions. (This does not exclude service at intake, i.e., providing information, screening and referral within the agency and community for all families and children seeking agency help; and determining need for specific services.)

§ 220.4 Advisory committees.

(a) An advisory committee on AFDC and CWS programs must be established at the State level and at local levels where the programs are locally administered, except that in local jurisdictions with small caseloads alternate procedures for securing similar participation may be established. The State plan must show that the advisory committee will:

(1) Advise the principal policy setting and administrative officials of the agency and have adequate opportunity for meaningful participation in policy development and program administration, including the furtherance of recipient participation in the program of the agency.

(2) Include representatives of other State agencies concerned with services, representatives of professional, civic or other public or private organizations, private citizens interested and experienced in service programs, and recipients of assistance or services or their representatives who shall constitute at least one-third of the membership. Such recipients or their representatives must be selected in a manner that will assure the participation of the recipients in the selection process and that they are representative of recipients of assistance or services.

(3) Be provided such staff assistance from within the agency and such independent technical assistance as are needed to enable it to make effective recommendations.

(4) Be provided with financial arrangements, where necessary, to make possible the participation of recipients in the work of the committee structure.

(b) An advisory committee on day care services must be established at the State level, either as a separate committee, or all or a part of the advisory committee on AFDC and CWS programs may be assigned this function. In either event, the committee must have at least one-third of its memberhip drawn from recipients or their representatives; and include representatives of agencies and groups concerned with day care or related services, i.e., other State agencies, professional or civic or other public or nonprofit private agencies, organizations or groups.

(c) The State plan must also show the structure and functions of the State and local committees for AFDC and CWS programs and for day care services; their relationship to other boards and committees associated with the State and local agencies; the system for selecting recipients or their representatives; and assure that the State committee for AFDC and CWS programs will be established no later than 90 days after plan approval.

§ 220.5 Use of professional staff.

(a) There must be adequate numbers and suitable qualifications for personnel drawn from social work and other appropriate disciplines to plan, develop and supervise services and to provide specialized services to families and children; and there must be an adequate system of career development and progression for such individuals.

(b) The State plan must also include:

(1) The staffing pattern for professional positions carrying out the service functions.

(2) An explanation of how the quantity and quality of services will be maintained in instances where the number of professional personnel performing eligibility and service functions results in a caseload or workload higher than that in effect during fiscal year 1968.

§ 220.6 Use of subprofessional personnel.

(a) No later than July 1, 1969 provision must be made for the training and effective use of subprofessional staff in the programs of services to families and children, including part-time or full-time employment of recipients and other persons of low income. (The term "subprofessional," as used here, means persons with less than college education, a high school graduate or a person with little or no formal education.)

(b) The State plan must also include:

(1) The methods of recruitment and selection, as will offer opportunities for employment of such persons.

(2) A career service plan that permits such persons to enter employment at the subprofessional level and progress to positions of increasing responsibility and remuneration.

(3) An organized training program, supervision and supportive assistance for such staff.

(4) Annual progression in the utilization of increasing numbers of such staff until there is optimal use of subprofessional staff in achieving the service goals for families and children.

§ 220.7 Use of volunteers.

(a) No later than July 1, 1969, provision must be made for the training and effective use of nonpaid or partially paid volunteers representing various age groups, specifically including senior citizens and young persons,

in the service programs for families and children and assisting related advisory committees.

(b) The State plan must also include:

(1) The methods of recruitment and selection which will assure participation of volunteers of all income levels.

(2) A program for organized training and supervision of such volunteers.

(3) Assignment to a specific position in which rests responsibility for the development, organization, and administration of the volunteer program, and for coordination of the program with related functions.

(4) Provision for meeting the costs incident to volunteer service.

(5) Annual progression in the utilization of volunteers until such use is sufficient for the achievement of the service goals for families and children.

§ 220.8 Relationship and use of other agencies.

(a) There must be maximum utilization of and coordination with other public and voluntary agencies, including with respect to the latter their experience as well as their facilities, providing services similar or related to the services provided under the plan, where such services are available without additional cost.

(b) Consideration must be given to the appropriate use of other public and voluntary agencies as sources for the purchase of care and services and such use must be based on a determination that required program standards will be met, a comparison of the effectiveness with which the services are likely to be rendered and the anticipated costs thereof.

(c) The State plan must show ways in which public and voluntary agencies will be used, including types of services to be purchased.

§ 220.9 Delivery and utilization of services.

(a) There must be progress in achieving organizational patterns and simplified administrative procedures that assure effective delivery and utilization of services.

(b) The State plan must also provide for continued assessment and necessary adaptations to achieve this requirement.

§ 220.10 Staff development.

There must be staff development on a continuing, progressive and comprehensive basis for all staff responsible for the development and provision of services. Such staff development shall include orientation, in-service training and educational leave. Provision shall be made for increasing each year the number of educational leaves for professional training to assure an adequate number of professional staff for these service programs.

§ 220.11 Appeals, fair hearings and grievances.

(a) There must be provision for a fair hearing, under which applicants and recipients may appeal denial of or exclusion from a service program, failure to take account of recipient choice of service or a determination that the individuals must participate in the service program. The results of appeals must be formally recorded and made available to the State advisory committee and all applicants and recipients must be advised of their right to appeal and the procedures for such appeal.

(b) There must be a system through which recipients may present grievances about the operation of the service program.

(c) The State plan must also describe the system for appeals and grievances and the methods of informing recipients of their right to appeal.

MANDATORY SERVICES APPLICABLE TO TITLE IV, PART A

§ 220.15 General.

The State plan:

(a) Must assure that responsibility is assumed for the provision of services to all appropriate persons receiving aid and others in the home whose needs were considered in determining eligibility for such aid, as called for under each of the requirements in §§ 220.16-220.25; and

(b) Must be specific in its identification of the services to be provided or purchased and the families and children to whom they will be available.

§ 220.16 Service plan.

(a) A service plan must be developed and maintained on a continuous basis for each family and child who requires service to maintain and strengthen family life, foster child development and achieve permanent and adequately compensated employment.

(b) By January 1, 1970, a service plan must be developed for each family and child in the current caseload and, within 1 year following approval for financial assistance for those added to the caseload after March 31, 1969.

(c) Such plans must be developed in cooperation with the family and must be responsive to the needs of each

individual within the family, while taking account of the relation of individual needs to the functioning of the family as a whole. Families shall have the right to accept or reject such plans. (See sec. 220.35 of this part for special provisions on refusal without good cause under the WIN program and referral of Unemployed Fathers to the WIN program.)

(d) Service plans must, as a minimum, include the objectives and content of the service requirements in sections 220.15-220.25.

(e) Each service plan must be reviewed as often as necessary, but at least annually, to assure that it is practically related to needs and is being effectively implemented.

§ 220.17 Employment objectives.

(a) Services must be provided to assist all appropriate persons to achieve employment and self sufficiency.

(b) Priority must be given to screening the entire caseload, and new cases as added, to identify those persons who are immediately referrable for training and employment and developing service plans for them.

(c) With respect to employment objectives, there must be as a minimum:

(1) Identification of individuals currently ready or with potentials for employment or training.

(2) Determination of the individuals appropriate for referral to programs offering training and employment services and referral of such individuals. (See section 220.35 of this subpart for policies governing referrals to the Work Incentive Program.)

(3) General and specialized diagnostic assessments (e.g., vocational, rehabilitation, education, medical, and

psychological) of health, learning, and other limitations that prevent involvement in employment or training.

(4) Plans to insure that training and employment lead to stability of employment in jobs which take full advantage of the individual's potential.

(5) Provision of services necessary to deal with personal and family barriers which prevent or limit individuals in their use of training and in their achievement of stable employment.

(6) Provision for utilization of public and voluntary agencies in the fields of vocational rehabilitation, health, vocational, and other education, including special attention to the capabilities of rehabilitation centers and workshops, community action agencies, neighborhood centers, and similar organizations.

§ 220.18 Child care services.

(a) Child care services, including in-home and out-of-home services, must be available or provided to all persons referred to and enrolled in the Work Incentive Program and to other persons for whom the agency has required training or employment. Such care must be suitable for the individual child; and the caretaker relatives must be involved in the selection of the child care source to be used if there is more than one source available. However, when there is only one source available, the caretaker relatives must accept it unless they can show that it is unsuitable for their child. The child care services must be maintained until the caretaker relatives are reasonably able to make other satisfactory child care arrangements.

(b) Progress must be made in developing varied child care resources with the aim of affording parents a choice in the care of their children.

(c) All child care services must meet the following standards:

(1) *In-home care.* (i) Homemaker service under agency auspices must meet the standards established by the State agency which must be reasonably in accord with the recommended standards of related national standard setting organizations, such as the Child Welfare League of America and the National Council for Homemaker Services.

(ii) Child care provided by relatives, friends, or neighbors must meet standards established by the State agency that, as a minimum, cover age, physical and emotional health, capacity and time of the caretaker to provide adequate care; hours of care; maximum number of children to be cared for; feeding and health care of the children.

(2) *Out-of-home care.* Day care facilities, used for the care of children, must be licensed by the State or approved as meeting the standards for such licensing and day care facilities and services must comply with the standards of the Federal Interagency Day Care Requirements and the requirements of section 422(a)(1) of the Social Security Act (see § 220.56).

(d) Both in-home and out-of-home child care provided for persons referred to the WIN program must be a service cost rather than an assistance cost.

[34 F.R. 1354, Jan. 28, 1969, as amended at 36 F.R. 5605, Mar. 25, 1971]

§ 220.19 Foster care services.

Effective July 1, 1969, services must be provided for children receiving aid in the form of foster care under title IV—part A, to:

(a) Assure placement appropriate to the needs of each child.

(b) Assure that the child receives proper care in such placement.

(c) Determine continued appropriateness of and need for placement through periodic reviews, at least annually.

(d) Improve the conditions in the home from which the child was removed, so that the child may be returned to his own home, or otherwise plan for the placement of the child in the home of other relatives, adoptive home or continued foster care, as appropriate.

(e) Work with other public agencies that have responsibility for the placement and care of any such children to assure that these agencies carry out their responsibilities in accordance with their agreement with the State agency administering or supervising the administration of AFDC.

§ 220.20 Prevention or reduction of births out-of-wedlock.

There must be a program to prevent or reduce the incidence of births out-of-wedlock and to otherwise strengthen family life. Services to prevent and reduce births out-of-wedlock must be extended progressively to all appropriate adults and youths, with initial priority for mothers who have had children born out-of-wedlock within the 2 preceding years or who are currently pregnant out-of-wedlock and for youths living in conditions immediately conducive to births out-of-wedlock. Services must be provided for fathers of such children.

§ 220.21 Family planning services.

Family planning services must be offered and provided to those individuals wishing such services, specifically including medical contraceptive services

(diagnosis, treatment, supplies, and followup), social services and educational services. Such services must be available without regard to marital status, age, or parenthood. Individuals must be assured choice of method and there must be arrangements with varied medical resources so that individuals can be assured choice of source of service. Acceptance of any services must be voluntary on the part of the individual and may not be a prerequisite or impediment to eligibility for the receipt of any other service or aid under the plan. Medical services must be provided in accordance with the standards of other State programs providing medical services for family planning (e.g., maternal and child health services).

§ 220.22 Services to meet particular needs of families and children.

Services must be provided to families and children as follows:

(a) Assist children to obtain education in accordance with their capacities.

(b) Improve family living through assisting parents to overcome homemaking and housing problems.

(c) Assist in reuniting families.

(d) Assist parents in money management, including consumer education.

(e) Assist parent in child rearing.

(f) Offer education for family living.

(g) Evaluate the need for, and in appropriate cases provide for, protective and vendor payments and related services.

§ 220.23 Protective services and cooperation with courts.

(a) Protective services must be provided to children receiving aid who are found to be in danger of or subject to neglect, abuse or exploitation.

(b) There must be a specific plan whereby the State or local agency will bring cases of child abuse, neglect or exploitation to the attention of appropriate courts or law enforcement agencies. The same criteria for referral to courts or law enforcement agencies must be used as are used by the State or local agency for all other parents and children. There must be continued cooperation with such courts and officials to assist in planning for the child to serve his best interests.

§ 220.24 Services related to health needs.

Services must be provided to families and children with health needs through identifying needs for preventive and remedial medical services; locating organizations or individuals who are willing to provide quality services on a dignified basis and helping to solve any problems which may prevent them from obtaining needed medical services and from making optimum use of the services available.

REQUIREMENTS APPLICABLE TO THE WORK INCENTIVE PROGRAM UNDER TITLE IV, PART A

§ 220.35 State plan requirements.

A State plan under title IV-A of the Social Security Act must provide that:

(a) Within the single organizational units required by § 220.2, there will be separate administrative units which will, to the maximum extent feasible, perform functions only in connection with the WIN program;

(b) These separate units will be responsible for:

(1) Developing jointly with the manpower agency a statewide operational plan and approving such plan in accordance with section 433(b) of the Act;

(2) Developing self-support services plans for individuals registered pursuant to § 233.11 of this chapter when requested by the manpower agency pursuant to section 433(a) of the Act. Plans for unemployed fathers must be developed so as to permit certification within 30 days of receipt of assistance. Self-support services under the WIN program are limited to:

(i) The following mandatory services, pursuant to title IV-Aof the Act and the regulations in this part: Child care, family planning, health-related services, homemaker services, home management and other functional educational services, housing improvement services, and transportation as needed to make self-support services accessible;

(ii) Selected vocational rehabilitation services, as defined in the Vocational Rehabilitation Act, which cannot otherwise be funded by the vocational rehabilitation agency; and

(iii) Employment-related medical and remedial care and services not included under the State's title XIX plan nor otherwise available under any other federally assisted program;

(3) Participating with the manpower agency in development of individual employability plans;

(4) Providing such services as are approved or added by the manpower agency in the self-sup[illegible] services plan, to enable the registered individual t[illegible]icipate in work or training activities under the WIN program. Under this requirement:

(i) Child care that is suitable to the child's needs and meets the standards specified in § 220.18(c) will be provided if needed. When more than one kind of child care is available, the mother or other caretaker relative may choose the type, but may not refuse to accept child care services if they are available; and

(ii) Self-support services as needed will be continued during the individual's participation in the WIN program and after entry into employment until he has completed the job entry period or has been terminated from WIN by the manpower agency, according to definitions established by the Department of Labor;

(5) Certifying in writing to the manpower agency that the individual is ready for employment or training under the WIN program, when the manpower agency requests such certification and the supportive services, if any, have been provided or arranged for. Unemployed fathers must be certified within 30 days after receipt of aid. Failure to certify 15 percent of the average number of individuals in the State who are required to be registered during any fiscal year after June 30, 1973, will result in a proportionate reduction in Federal funds for assistance payments (see § 233.10(b) (5) of this chapter); and

(6) Providing counseling and other services, for a period of 60 days, to individuals determined by the Secretary of Labor to have refused training or employment under the WIN program without good cause, for the purpose of persuading them to accept appropriate training or employment (see § 233.11(f) of this chapter for sanctions). Under this requirement, once a period of counseling and other services has been provided to an individual, and he has again been found by the Secretary of Labor to have refused training or employment under WIN without good cause, the agency shall not provide another period of counseling and other

services, unless it is warranted by unusual circumstances.

(c) The State agency will assure a non-Federal contribution to the manpower agency for 10 percent of the cost of operations of the WIN program, and, for this purpose, will plan jointly with the manpower agency for the development and use of in-kind resources. (See § 220.36.) The State agency must make the arrangements for, but need not itself make, the contribution.

[37 F.R. 12200, June 20, 1972]

§ 220.36 Non-Federal contribution.

For purposes of § 220.35(c):

(a) Except as specifically authorized by Federal statute, a non-Federal contribution may not include funds or expenditures which are used to meet the Federal or State share of other programs receiving Federal financial assistance.

(b) The non-Federal contribution may be in cash or in-kind. A contribution in-kind may be made in the form of the provision of services, staff, space, equipment, or any other goods or services of value essential to the operation of the work incentive program. Where such contribution is in-kind, the amount thereof will be determined on the basis of its reasonable value as established by suitable documentation.

(c) The costs of operation of the work incentive program which may be met by the non-Federal contribution may include the costs of traning, supervision, materials, administration, incentive payments, transportation, and other items as are authorized by the manpower agency, but may not include any reimbursement for time spent by participants in work, training, or other participation in such program.

(d) If the State agency fails to make arrangements for the non-Federal contribution of 10 percent of the total statewide work incentive program costs of operation, the Secretary of Health, Education, and Welfare may withhold under the conditions specified in the law the equivalent of amounts to be paid from the grants to the State agency for the public assistance titles.

[37 F.R. 12200, June 20, 1972]

MANDATORY SERVICES APPLICABLE TO TITLE IV, PART B

§ 220.40 Child welfare services.

(a) The State plan must assure progressive extension of child welfare services so that such services will be available in all political subdivisions by July 1, 1975, for all children in need of them; including annual progress in one or more of the following dimensions:

(1) Covering additional political subdivisions;

(2) Reaching additional children in need of services;

(3) Expanding the range of services provided;

(4) Improving the quality of services through additional trained child welfare personnel.

(b) The State plan must provide that:

(1) As a basis for giving priority in extending the provision of child welfare services to communities with the greatest need for such services, there will be a reasonable and objective method for assessing this need, taking into consideration their relative financial need.

(2) As a minimum, there will be child welfare services to children in their own homes and the provision of foster care of children.

(3) There will be a case plan, including diagnostic evaluation and plan for treatment, when a child is accepted for child welfare services; and periodic review of such plan.

(4) Child welfare services will be available on the basis of need for services and shall not be denied on the basis of financial need, legal residence, social status or religion.

(5) Child welfare services will not be limited to AFDC cases.

OTHER REQUIREMENTS APPLICABLE TO TITLE IV, PARTS A AND B, AS INDICATED

§ 220.45 Community planning (applicable to IV-A and B).

(a) There must be progress in developing State and local agency leadership for participation in community affairs which will result in the development of community resources necessary to achieve program objectives of title IV, parts A and B.

(b) The State plan must also show the steps to be taken to achieve this objective, including the staffing for this function.

§ 220.46 Reports and evaluations (applicable to IV-A and B).

Such reports and evaluations must be furnished to the Secretary as he may specify, showing the socpe, results and costs of services for families and children.

§ 220.47 Implementation; local agencies and service contractors (applicable to IV-A and B).

(a) The State agency must have methods of assuring that local agencies are meeting the plan requirements, and where services are purchased, of monitoring local

agencies and service contractors to insure that the plan requirements are being met and funds are being appropriately and effectively used. See separate SRS policy governing purchase of services.

(b) The State plan must also describe the methods to be used to carry out this requirement.

§ 220.48 Establishing paternity and securing support for children receiving aid (applicable to IV-A).

(a) There must be a program for establishing paternity for children born out-of-wedlock and for securing financial support for them and for all other children receiving AFDC who have been deserted by their parents or other legally liable persons. Efforts must be made to locate putative and absent parents and there must be a determination of their potential to provide financial support. There must be provision for the utilization of reciprocal arrangements with other States to obtain or enforce court orders for support. There must be a single staff unit in the State agency and in large local agencies to administer this program. (The files of the Social Security Administration are available to the State agencies when other efforts have failed to provide the necessary information on the address of a parent.)

(b) There must be a plan of cooperation with courts and law enforcement officials and pertinent information must be provided them when their assistance is needed in locating putative or deserting fathers, establishing paternity and security support.

(c) In developing plans for cooperation with courts and law enforcement officials, there must be agreement that the information provided by the State or local agency will be used only for the purpose intended. There must be provision for financial arrangement to

reimburse courts and law enforcement officials when it is found necessary for them to undertake services beyond those usually provided in such cases.

(d) There must be cooperation with other State welfare agencies administering AFDC in locating parents of an AFDC child against whom a support petition has been filed in another State and in attempting to secure compliance by a parent now residing in the agency's own State.

(e) Clearance procedures established with the Internal Revenue Service will be used in respect to any parents of AFDC children whose location is unknown and who are failing to comply with existing court orders for support payments or against whom petitions for orders have been filed. (See separate issuance related to these procedures.)

§ 220.49 Other plan requirements for child welfare services under title IV-B (see also Subpart D of this part).

(a) *Single State agency.* (1) (i) The State plan shall designate a State agency as the single agency for the administration of the plan or for supervision of the administration of part of the plan by local agencies.

(ii) Effective July 1, 1969, the State plan must provide that the State agency responsible for the State plan approved under title IV-A will also administer or supervise the administration of the plan under title IV-B, except that

(a) if on January 2, 1968 the State agency administering the plan under title IV-B is different from the State agency responsible for the State plan approved under title IV-A, the requirement in this subdivision (ii) shall not apply so long as such agencies are different;

(b) if on January 2, 1968 the local agency administering the plan approved under title IV-B is different from the local agency administering the plan approved under title IV-A, the requirement in this subdivision (ii) shall not apply with respect to such local agencies so long as such agencies are different.

(2) The State plan shall set forth the authority of the State agency under State law for the administration of the program. Where there is administration by local agencies, the plan shall set forth the legal basis for such administration or for the supervision of such administration by the State agency. Citations to all directly pertinent laws and copies of all interpretations of such laws by appropriate State officials, and citations to all directly pertinent interpretations of laws by courts, shall be furnished as part of the plan.

(b) *Organization for administration.* The State plan shall describe the organization of the State agency for the administration of the plan and of any local agencies engaged in such administration. It shall also describe the methods of administration utilized by the State agency in the administration of the plan and by any local agencies engaged in such administration. Where there is administration by local agencies, the State plan shall describe the nature and extent of the supervision exercised by the State agency.

(c) *Personnel standards.* (1) There shall be, with respect to the employees of the State agency and those of local agencies, personnel administration on a merit basis which shall be in accordance with current Federal Standards for a Merit System of Personnel Administration in 45 CFR Part 70. The State plan shall contain necessary materials relating to personnel administration to permit evaluation for compliance with the said Standards for a Merit System of Personnel Administration.

(2) The State plan must provide that the State agency will develop and implement an affirmative action plan for equal employment opportunity in all aspects of personnel administration as specified in § 70.4 of this title. The affirmative action plan will provide for specific action steps and timetables to assure such equal opportunity. The plan shall be made available for review upon request.

(d) *Coordination with service under AFDC.* There shall be coordination between child welfare services and services in AFDC with a view to provision of welfare and related services which will best promote the welfare of such children and their families.

(e) *Reports.* The State plan shall provide that the State agency will make such reports with respect to any and all phases of the State program of child welfare services in such form and containing such information as the Bureau may find necessary to assure the correctness and verification of such reports.

[34 F.R. 1354, Jan. 28, 1969, as amended at 35 F.R. 315, Jan. 8, 1970; 37 F.R. 14723, July 22, 1972]

Subpart B—Optional Provisions

§ 220.50 General.

If a State elects under title IV-A to provide services for additional groups of families and children, i.e., current applicants or former or potential applicants and recipients of public assistance, the State plan:

(a) Must identify such group or groups and specify the services to be made available to such group;

(b) Contain provisions committing the State to meet the requirements in this subpart;

(c) Indicate the steps to be taken to meet those requirements; and

(d) Provide for the submission of such implementation and progress reports as may be specified.

SERVICES IN AID TO FAMILIES WITH DEPENDENT CHILDREN

§ 220.51 Range of optional services.

(a) The Social Security Act (sec. 406(d)) defines the full range of family services in AFDC as follows: "* * * services to a family or any member thereof for the purpose of preserving, rehabilitating, reuniting, or strengthening the family, and such other services as will assist members of a family to attain or retain capability for the maximum self-support and personal independence."

(b) The full range of or selected family services, and child welfare services as defined in this subpart, may be included except for those services excluded in § 220.61.

(c) Following are types of selected services:

(1) *Child care services.* Child care services provided to families other than those required in § 220.15, must meet the standards required in that section.

(2) *Emergency assistance—services.* Emergency assistance in the form of services to needy families with children, including migrants, may be provided. Such services must be planned and staffed, so as to assure immediate accessibility and prompt response, and separate policy instructions relating to emergency assistance must apply. (These separate policies do not apply to use of title IV-B funds.)

(3) *Educational and training services.* Educational and training services may be included where the Work Incentive Program has not been initiated in a local jurisdiction or is inadequate in scope or size to meet the needs of recipients; or where the Work Incentive

Program has been initiated and there is an agreement with representatives of the Labor Department that these services are not available to recipients. Full use must be made of services available through the Employment Service.

(4) *Legal services.* Legal services, in addition to those required in §220.25, may be included for families desiring the help of lawyers with their legal problems (see separate policies governing the provision of such services).

§ 220.52 Coverage of optional groups for services.

(a) The agency may elect to provide services to all or to reasonably classified subgroups of the following:

(1) Families and children who are current applicants for financial assistance.

(2) Families and children who are former applicants or recipients of financial assistance.

(3) Families and children who are likely to become applicants for or recipients of financial assistance, i.e., those who:

(i) Are eligible for medical assistance as medically needy persons, under the States title XIX plan.

(ii) Would be eligible for financial assistance if the earnings exemption granted to recipients applied to them.

(iii) Are likely, within 5 years, to become recipients of financial assistance.

(iv) are at or near dependency level, including those in low-income neighborhoods and among other groups that might otherwise include more AFDC cases, where services are provided on a group basis.

(4) All other families and children for information and referral service only.

(b) All families and children in the above groups, or a selected reasonable classification of families and children with common problems or common service needs, may be included.

CHILD WELFARE SERVICES

§ 220.55 Range of optional services and groups to be served.

(a) The Social Security Act (sec. 425) defines the full range of child welfare services as follows: " * * * public social services which supplement, or substitute for, (1) parental care and supervision for the purpose of preventing or remedying, or assisting in the solution of problems which may result in the neglect, abuse, exploitation, or delinquency of children, (2) protecting and caring for homeless, dependent, or neglected children, (3) protecting and promoting the welfare of children of working mothers, and (4) otherwise protecting and promoting the welfare of children, including the strengthening of their own homes where possible or, where needed, the provision of adequate care of children away from their homes in foster family homes or day care or other child care facilities."

§ 220.56 Day care services.

(a) If day care services are included under title IV-B, they must meet the standards required in § 220.18(c)(2), and in addition, the State plan must indicate compliance with the following:

(1) Cooperative arrangements with State health and education agencies to assure maximum utilization of such agencies in the provision of health and education services for children in day care.

(2) An Advisory committee on day care services as set forth in § 220.4(b).

(3) A reasonable and objective method for determining the priorities of need, as a basis for giving priority, in determining the existance of need for day care, to members of low-income or other groups in the population and to geographical areas which have the greatest relative need for the extension of day care.

(4) Specific criteria for determining the need of each child for care and protection through day care services.

(5) Determination that day care is in the best interests of the child and the family.

(6) Provision for determining, on an objective basis, the ability of families to pay for part or all of the cost of day care and for payment of reasonable fees by families able to pay.

(7) Provision for the development and implementation of arrangements for the more effective involvement of the parent or parents in the appropriate care of the child and the improvement of his health and development.

(8) Provision of day care only in facilities (including private homes) which are licensed by the State or approved as meeting the standards for such licensing.

Subpart C—Federal Financial Participation

§ 220.60 General.

The regulations in this subpart deal separately with Federal financial participation in the costs of services under the AFDC and Child Welfare Services programs because these programs have different legal provisions governing the extent of Federal funding. However, in general there are no differences in the kinds of services

or methods of providing services under these two programs.

§ 220.61 Federal financial participation; AFDC.

(a) *General.* Federal financial participation is available in expenditures, as found necessary by the Secretary.

(1) For the proper and efficient administration of the plan;

(2) For the costs of providing the services for the groups of families and children;

(3) For carrying out the activities described in subparts A and B of these regulations that are included in the approved State plan. Such participation will be at the rates prescribed in this subpart.

(b) *Persons eligible for service.* Federal financial participation is available under this section only for services provided to:

(1) A child or relative who is receiving aid under the plan and to any essential person living in the same household as such relative and child.

(2) The groups defined in § 220.52: Current applicants for aid, former and potential applicants or recipients and other individuals requesting information and referral service only. In respect to any child or relative who has formerly been an applicant for or recipient of aid, counseling and casework services may be provided. Other services may be provided only to those children or relatives who have received aid within the previous 2 years and who qualify under the definition of potential applicants or recipients.

(c) *Sources for furnishing services.* Federal financial participation is available under this section for services furnished:

(1) By State or local agency staff, i.e., full- or part-time employed staff; and volunteers, or

(2) By purchase, contract, or other cooperative arrangements with public or private agencies or individuals, provided that such services are not available without cost from such sources.

(d) *Provisions governing costs of certain services.* (1) Medical and assistance costs. Federal financial participation under this section will not be available in expenditures for subsistence and other assistance items or for medical or remedial care or services, except

(i) For subsistence and medical care when they are provided as essential components of a comprehensive service program of a facility and their costs are not separately identifiable, such as, in a rehabilitation center, a day care facility or a maternity home;

(ii) For medical and remedial care and services as part of family planning services;

(iii) For required medical examinations for persons caring for children under agency auspices, when not otherwise available or not included in purchase arrangements;

(iv) For identifying medical problems of children in child care facilities; or

(v) For medical diagnosis and consultation when necessary to carry out service responsibilities, e.g., for recipients under consideration for referral to training and employment programs.

(2) Vocational rehabilitation services. Federal financial participation is not available in the costs of providing services for the disabled as defined in the Vocational Rehabilitation Act except pursuant to an agreement with the State agency administering the vocational rehabilitation program. This applies to provision of services by staff of the agency and purchase.

(3) Federal financial participation is available in the costs of the following:

(i) Staff in providing services related to foster care, i.e., recruitment, study, and approval of foster family homes, services to children in foster care and their parents, and work with foster parents and staff of child-caring institutions. Vendor payments for foster care are assistance payments and are, therefore, not subject to the service rate of Federal financial participation.

(ii) Work related to child care resources to be used by the agency, i.e., the costs of staff engaged in the development, recruitment, study,approval, and subsequent evaluation of out-of-home child care resources, except the costs of staff primarily engaged in the issuance of licenses or in the enforcement of standards; study, approval, and subsequent evaluation of in-home care arrangements; and in the provision of technical assistance to improve the quality of child care.

(iii) Services provided in behalf of families and children, e.g., community planning, assuring accessibility to entitled service resources; and studies of service needs and results.

(iv) Certain services to assist individuals to achieve employment and self-sufficiency:

(a) Payments for additional expenses of individuals that are attributable to their participation in training or

work experience projects, e.g., transportation, lunches, uniforms. (Not applicable to assistance recipients earning wages, including employment or on-the-job training, or on special work projects under Work Incentive Program, since such expenses will be deducted in determining net income.)

(b) Medical examinations that are necessary to determine physical and mental health conditions for training or employment.

(c) Education and training as provided in § 220.51(c)(3).

(v) Agency staff engaged in locating and planning with deserting or putative fathers; assessing potentials and determining appropriate actions; developing volunary support; assisting relatives to file petitions for the establishment of paternity; reuniting families; and cooperative planning with appropriate courts and law enforcement officials.

(e) *Kinds of expenses for which Federal financial participation is available.*

(1) Salary and travel costs of service workers and their supervisors giving full-time to services and for staff entirely engaged (either at State or local level) in developing, planning, and evaluating services. Where a full-time service worker also carries services under the adult categories, the portion applicable to AFDC (IV—A) is at AFDC rates.

(2) Salary costs of service-related staff such as, supervisors, clerks, secretaries and stenographers, which represent that portion of the time spent in supporting full-time service staff.

(3) Related expenses of staff performing service or

service-related work under subparagraph (1) or (2) of this paragraph (e) in proportion to their time spent on services, such as communications, equipment, supplies and office space.

(4) Definitions: Applicable to staff performing service functions.

(i) *Full-time service work.* (a) Persons performing full time on functions related to the provisions of service means persons assigned on a full-time basis to such functions (services under the adult categories may also be carried).

(b) It is not necessary to maintain daily time records for this purpose but it is expected that states will check periodically to assure that persons assigned on a full-time basis are performing substantially on this basis.

(c) A full-time service worker can be expected to receive questions from recipients (and former or potential) related to eligibility and the amount of payment or medical benefits and to make this information available to staff responsible for eligibility and related functions. Such workers may not carry the responsibility for securing information or taking the actions in respect to determining initial and continuing eligibility for financial or medical assistance or to change the amount of financial assistance being provided.

(ii) *Meaning and illustrations of service work.* Service work means activity of staff in providing the services and carrying out the related responsibilities specified in subparts A and B. This includes activities of such staff as caseworkers, homemakers, child care personnel, Work Incentive Program coordinators, and community planning staff.

(iii) *Meaning and illustrations of service-related work.* Service-related work means activity of staff other than service workers which is necessary to administer a service program fully. This includes secretaries, stenographers and clerks serving service staff, supervisors of service workers and their supervisors, staff responsible for developing and evaluating service policies, and staff collecting and summarizing financial and statistical data on services, either at the State or local level.

(iv) *Staff.* Staff performing service or service related work includes professional, subprofessional (e.g., recipients and other workers of low income), and volunteer staff.

(5) Other expenses related to the provision of service in support of full-time service staff, including a portion of the salary costs of any agency person (except the service worker who must be on a full-time basis) who is working part time on service functions (either at the State or local agency level). Such expenses include the portion of salary costs of supervisors related to supervision of service work, a portion of fiscal costs related to services, a portion of research costs related to services, a portion of salary costs of field staff, etc.

(6) Costs of services purchased.

(7) Travel and related costs for children and parents to obtain consultation, medical, and other services.

(8) Costs of State and local advisory committees including expenses of attending meetings, supportive staff and other technical assistance.

(9) Costs of administrative and supervisory staff attending meetings pertinent to the development or implementation of Federal or State service policies and programs.

(10) Costs of operation of agency facilities, used solely for the provision of services. Costs may include expenditures for staff; space, including minor remodeling, heat, utilities, and cleaning furnishings; program supplies, equipment and materials; food and food preparation; and liability and other insurance protection. Costs of construction and major renovations are not matchable as services. Appropriate distribution of costs is necessary when other agencies use such facilities for the provision of their services, such as in comprehensive neighborhood service centers.

(11) Child care expenditures for WIN participants must be charged as a service expenditure and separately identified since Federal funds for this purpose come from a separate appropriation. Child care expenditures for other AFDC cases may be charged as a service expenditure or included as a financial assistance expenditure subject to matching under the title IV—A formula, depending on how the State plan specifies. Where child care is provided as a service the payment may be made either to the vendor of the service directly or to the recipient for payment by him. In either case documentation is needed in the form of statements of the type and quantity of services rendered for each recipient (receipted by vendor when the service payment is made directly to the recipient) to establish the fact that the expenditure was for services.

(f) *Rates of Federal financial participation.* (1)(i) Federal financial participation at the rate of 85 percent for the fiscal year ending June 30, 1969, and at the 75 percent rate for subsequent fiscal years is available for the service costs identified in paragraphs (d) and (e) of this section; and at the rate of 75 percent for all expenses related to emergency services, and training and staff development.

(ii) With respect to Puerto Rico, the Virgin Islands, and Guam, the Federal share:

(a) For services and training and staff development for the fiscal year ending June 30, 1969, and subsequent years, is 60 percent, except 75 percent for emergency assistance in the form of services.

(b) For family planning services and referral for participation under the Work Incentive Program for any fiscal year beginning on or after July 1, 1967 to:

(1) Puerto Rico shall not exceed $2 million.

(2) The Virgin Islands shall not exceed $65,000.

(3) Guam shall not exceed $90,000.

(2) Time limited rates are applicable to certain service costs. The total costs of salaries and travel of workers carrying responsibility for both services and eligibility functions and supervisory costs related to such workers, and all or part of the salaries of supporting secretarial, stenographic, or clerical staff depending on whether they work full-time or part-time for the workers specified in this subparagraph (2), are subject to the following rates of Federal financial participation:

(i) 75 percent for the fiscal year ending June 30, 1969 (57 percent for Puerto Rico, the Virgin Islands, and Guam).

(ii) For the fiscal year ending June 30, 1970, at a rate, determined in accordance with standards and methods prescribed by the Secretary from time to time, which gives due regard to the amount of services furnished.

(iii) 50 percent for all subsequent years.

(3) For the period January 1, 1968, through June 30, 1968, Federal financial participation is available at the 75 percent rate for expenditures for services included in a State plan approved under the service policies

previously in effect, except that the rate of 85 percent is applicable to expenditures for services furnished under an approved plan pursuant to section 402(a)(14) and (15) of the Social Security Act. However, Federal financial participation is not available for the purchase of service prior to June 10, 1968 from sources other than state agencies.

(4) Federal financial participation at the 50 percent rate is available in the costs of the following activities that are separate from but relevant to the costs of services:

(i) Salaries and travel of staff primarily engaged in determining eligibility and their supervisors and supporting staff (clerks, secretaries, stenographers, etc.).

(ii) Salaries and travel of staff primarily engaged in developing eligibility provisions and the determination processes (either at the State or local agency level).

(iii) Expenses related to such staff, and for staff specified in paragraph (f) (2) of this section, such as for communications, equipment, supplies and office space.

(iv) Costs of State or local staff engaged in the collection of support and accounting for such funds and determining the effect of support funds on eligibility or assistance payments. No Federal financial participation is available in the costs of agency staff engaged in apprehension, arrest, or enforcement activities.

(v) Costs of reimbursing courts and law enforcement officials for their increased effort or additional staff time in assisting the State or local agency in respect to its program to secure support and establish paternity. Such reimbursement is for costs that are specific to

carrying out any of the following activities which the State agency believes will contribute to optimum results in securing support and establishing paternity:

(a) Consultation to State and local agencies on appropriateness of cases for court action to secure support or establish paternity.

(b) Consultation to State and local agencies on the development of evidence for court hearings.

(c) Developing information as to the location of parents and other legally liable persons, when all location efforts of the State or local agency have failed.

(d) Consultation and participation in the development of support on a voluntary basis; and followup services on court orders for support.

(e) Costs in presenting support and paternity actions to the court.

(f) Necessary fees for court judicial actions, when these are not waived.

(g) Costs of court and other officials providing training to public welfare staff may be included as staff development costs.

(h) Costs of the judiciary system, apprehension and arrest are not included.

(vi) Other expenses of administration not specified at the 75 percent (85 percent) rate for services.

(g) *Federal financial participation in the work incentive program.* (1) Federal financial participation at the rate of 90 percent is available in the costs of self support services (and the related administrative costs) provided by the separate administrative units in accordance with § 220.35(b)(4).

(2) The amount of Federal funds available for Federal financial participation at the rate of 90 percent, as appropriated by Congress, will be apportioned among the States according to the methods prescribed by the Secretary.

(3) This paragraph does not apply to Puerto Rico, the Virgin Islands, and Guam.

[34 F.R. 1354, Jan. 28, 1969, as amended at 34 F.R. 9715, June 21, 1969; 37 F.R. 12201, June 20, 1972]

§ 220.62 Federal Financial Participation: CWS.

(a) *Federal share.* The Federal share of service programs under title IV—B shall be at the rate specified in or promulgated pursuant to section 423 of the Act.

(b) *Persons eligible for service.* (1) Federal financial participation under title IV—B is available to serve all families and children in need of child welfare services without respect to whether they are receiving AFDC.

(2) Expenditures for care of children in foster family homes, group homes, institutions, family day care homes or day care centers, or for care of unmarried mothers in foster family homes, group homes, institutions, or independent or other living situations, shall be for those children or unmarried mothers for whom the public welfare agency, through its child welfare services program, accepts responsibility for providing or purchasing such care. This responsibility includes: determining the need for such care and that the type of care is in the best interest of the child and his family or of the unmarried mother; determining the ability of the family to contribute to the cost of care; and developing a plan for continuing supervision of the child or unmarried mother in care.

(c) *Sources of services.* Federal financial participation is available under this section for services furnished:

(1) By State or local agency staff, i.e., full- or part-time employed staff, and volunteers, or

(2) By purchase, contract, or other cooperative arrangements with public or private agencies or individuals, provided that such services are not available without cost from such sources.

(d) *Kinds of expenses included.* Federal financial participation is available for expenditures for the following purposes: personnel services; professional education; institutes, conferences and short-term courses; foster care of children; care of unmarried mothers; day care of children; purchase of homemaker services; specialized services; return of runaway children; research and special facilitative services; merit system costs; advisory committees; membership fees; supplies, equipment and communication; and occupancy and maintenance of space.

§ 220.63 Relationship of costs under parts A and B of title IV.

(a) There must be methods of allocating the costs of providing services under the child welfare services program and providing services under the AFDC program.

(b) Service expenses that jointly benefit title IV—A and B programs may be allocated between them using any reasonable basis or may be charged entirely to IV—A or B if they are considered to be of primary benefit to such program. The title IV—A program may be considered to be primarily benefited if the number of AFDC children served represents at least 85 percent of the total children served. The 85 percent computation may be based on local agency totals or on statewide totals.

(c) The one exception to the policy expressed above in paragraph (b) of this section pertains to educational leave. States can elect to charge educational leave totally either to AFDC under title IV—A or child welfare services under title IV—B, without regard to the proportion of time devoted to either program before or after educational leave. The only condition to be met is that the person returning from educational leave be employed in the single organizational unit supervising or providing all services for families and children under title IV—A and/or title IV—B of the Social Security Act, as amended. Where a single organization unit has not been established an allocation of costs must be made in accordance with existing policy.

§ 220.64 Provisions common to title IV—A and B.

(a) Expenditures for certain functions under both parts A and B of title IV shall be in accordance with the other provisions governing:

(1) Employee benefit costs; as described in "Federal Participation in Costs of Employee Benefit Systems."

(2) Organization memberships; as described in "Federal Participation in Costs of State Agency Memberships in Organizations."

(3) Occupancy or maintenance of space; as described in "Expenditures by State of Granted Funds for Occupancy and Maintenance of Space."

(b) (1) Donated private funds for services may be considered as State funds in claiming Federal reimbursement where such funds are:

(i) Transferred to the State or local agency and under its administrative control; and

(ii) Donated on a unrestricted basis (except that

funds donated to support a particular kind of activity, e.g., day care, or to support a particular kind of activity in a named community, are acceptable provided the donating organization is not the sponsor or operator of the activity being funded).

(2) Donated private funds for services may not be considered as State funds in claiming Federal reimbursement where such funds are:

(i) Contributed funds which revert to the donor's facility or use.

(ii) Donated funds which are earmarked for a particular individual or for members of a particular organization.

§ 220.65 Amount of Federal Funding.

(a) The amount of Federal funds available for services under title IV—A is dependent upon the availability of and extent of matching State funds, except as stated in § 220.61 (f), for Puerto Rico, Virgin Islands, and Guam.

(b) The amount of Federal funds under title IV—B may not exceed the amount available under the allotment formula prescribed by law. The availability of these funds is dependent upon matching State funds determined according to the formula prescribed by law.

Subpart D—Other Provisions Governing Child Welfare Services Programs

Source: The provisions of this Subpart D appear at 35 F.R. 315, Jan. 8, 1970, unless otherwise noted.

§ 220.70 Meaning of Terms.

Unless the context otherwise requires, the following terms, as used in this subpart have the following meanings:

(a) "Act" means title IV, part B of the Social Security Act, 42 U.S.C. 601-626.

(b) "Social and Rehabilitation Service" means the Social and Rehabilitation Service in the Department of Health, Education, and Welfare.

(c) "State" means the several States, the District of Columbia, Puerto Rico, the Virgin Islands, and Guam.

(d) "State agency" means the public welfare agency of a State which has been designated as the single agency for the purpose of administering or supervising the administration of a State plan for child welfare services.

(e) "Local agency" means the public welfare agency of a political subdivision of a State which is engaged in the administration of that part of the State plan that pertains to the locality and which, in such administration, is under the supervision of the State agency.

(f) "Official forms" means forms supplied by the Social and Rehabilitation Service to State agencies for submitting required information and requests.

(g) "Children" means those individuals under the age of 21 years who are homeless, dependent, neglected or in danger of becoming delinquent regardless of the fact that they also may fall into other categories, and for whom services under the State program of child welfare services are authorized by State law.

(h) "Child welfare services" means public social services which supplement, or substitute for, parental care and supervision for the purposes set forth in Section 425 of the Act.

(i) "Establishing, extending, and strengthening" means stabilizing, increasing where necessary and

desirable the applicability of, and making stronger the State program of child welfare services and undertaking new child welfare services where necessary and desirable for meeting the unmet needs of children.

(j) "State plan" means the plan developed jointly by the State agency and the Social and Rehabilitation Service for establishing, extending and strengthening the State program of child welfare services, taking into account the condition of such program, the needs of children and the potential for meeting the unmet needs of children through Federal financial participation. It includes the basic plan and the annual budget pursuant to § 220.71.

§ 220.71 The State plan; the annual budget; submission, approval, duration, purpose, revision.

(a) *Submission, approval, duration.* Upon adoption by the State of a State plan (including a basic plan and an annual budget jointly developed by the State agency the Social and Rehabilitation Service) it shall be certified by a duly authorized officer of the State agency and submitted to the Social and Rehabilitation Service for approval. Upon approval the State plan shall be in effect for the purposes of the Act. The basic plan, as approved and as it may be revised in accordance with paragraph (d) of this section from time to time, shall remain in continuous effect without periodic renewal. The annual budget, as it may be revised in accordance with paragraph (d) of this section during the fiscal year, shall be in effect only for the fiscal year for which it is approved.

(b) *Basic plan, content, purpose.* The basic plan, as a part of the State plan, shall be a narrative description, together with appropriate illustrations, of the total

State program of child welfare services. It shall be developed in accordance with instructions as to form and subject matter issued by the Social and Rehabilitation Service. A basic plan which is in effect in accordance with paragraph (a) of this section shall be the State plan for the purpose of allotment to the State of sums appropriated under the Act. From time to time, as determined by the Social and Rehabilitation Service, a new plan may be required of all States.

(c) *Annual budget, content, purpose.* The annual budget, as a part of the State plan, shall be jointly developed annually for the fiscal year and submitted by the State agency on official forms to the Social and Rehabilitation Service for approval. It shall be a statement, certified by a duly authorized officer of the State agency, which includes proposed and estimated expenditures for carrying out those items described in the basic plan which the State agency and the Social and Rehabilitation Service have agreed upon as establishing, extending, and strengthening the State program of child welfare services for the fiscal year. The annual budget, upon approval, and subject to applicable provisions of the Act, the regulations in this subpart and the basic plan, shall be the State plan for the fiscal year for purposes of determining the amount of the Federal share of the total sum expended thereunder, and making payments to the State out of the sums allotted to it for the fiscal year.

(d) *Revision.* The State plan shall be revised whenever necessary because of any material change in the program provided by the plan, in the organization, policies or operations relating to the program, or any changes in pertinent law, and as may otherwise be deemed necessary by the Social and Rehabilitation Service. Revisions are subject to joint development by the State agency and the Social and Rehabilitation

Service, and shall be submitted to the Social and Rehabilitation Service, certified by a duly authorized officer of the State agency, for approval. Revisions shall be incorporated into the State plan and shall be in effect for the purposes of the Act upon, and in accordance with, the approval. Except when it is not feasible for a revision to the annual budget to be submitted to the Social and Rehabilitation Service a reasonable time in advance of being carried out by the State agency, approval of revisions shall be prospective.

[35 F.R. 315, Jan. 8, 1970; 35 F.R. 465, Jan. 14, 1970]

§ 220.72 State and local funds.

In order to be entitled to payments from the sums available from the State's allotment under section 421 of the Act in the amount of the Federal share, up to the amount of such sums, the State must make expenditures under the annual budget equal to the State's share from State or local funds.

§ 220.73 Allotment of Federal funds.

Section 421 of the Act prescribes the following method for determining a State's allotment for State child welfare service for each fiscal year:

(a)(1) From the sums appropriated for each fiscal year for grants to States for State child welfare services, each State shall be entitled to an allotment of $70,000, and

(2) Each State shall be entitled to an allotment from the remainder of the sums appropriated of an amount which bears the same ratio to such remainder as the product of the population of such State under the age of 21 and its allotment percentage bears to the sum of the corresponding products of all the States.

(b) The "allotment percentage" for any State shall be 100 per centum less the State percentage, which is that percentage which bears the same ratio to 50 per centum as the per capita income of such State bears to the per capita income of the United States, except that the allotment percentage shall in no case be less than 30 per centum or more than 70 per centum, and the allotment percentage for Puerto Rico, the Virgin Islands, and Guam shall be 70 per centum.

§ 220.74 Payments from allotments.

Payments to a State from the sums available from its allotments under section 421 of the Act shall be computed and made pursuant to sections 422 and 423 of the Act, as follows:

(a) For any fiscal year the "Federal share" for any State shall be 100 per centum less that percentage which bears the same ratio to 50 per centum as the per capita income of such State bears to the per capita income of the United States except that the Federal share shall in no case be less than 33 1/3 per centum or More than 66 2/3 per centum, and the Federal share for Puerto Rico, the Virgin Islands and Guam shall be 66 2/3 per centum.

(b) Estimates: Prior to the beginning of each fiscal quarter an authorized official of the State agency should submit to the Social and Rehabilitation Service on official forms an estimate of the amount of the Federal share which it will require from the sums available from its allotments under section 421 of the Act in carrying out the annual budget during such quarter.

(c) Payments: On the basis of the annual budget and the quarterly estimates submitted by the State agency, each State shall be paid from the sums available from its allotments, the estimated Federal share of the cost of

carrying out the annual budget for such fiscal quarter. The amount so to be paid to the State shall be reduced or increased, as the case may be, by any overpayment or underpayment to the State for any prior quarter not previously adjusted under this paragraph.

§ 220.75 Records and audit.

The State agency shall establish and maintain such accounts, records, and supporting documents as will permit an accurate and expeditious Federal audit of the program to be made at any time. Such accounts, records and supporting documents shall be maintained until the completion of such audits (including the final resolution of any questions raised thereby) or for 3 years, whichever is later, unless the State agency is requested to retain particular accounts, records, or supporting documents for a longer period.

§ 220.76 Custody and methods of disbursement.

Except as otherwise provided in the Act and the regulations in this subpart, State laws, rules, regulations, and standards governing the custody and methods of disbursement of State funds shall govern the custody and methods of disbursement of Federal funds paid to the state.

§ 220.77 Fiscal year to which expenditures chargeable.

An expenditure under an annual budget will be charged to that Federal fiscal year in which the obligation was incurred: *Provided*, That obligation incurred in 1 fiscal year for services and expenses continuing into the next fiscal year may be charged to the allotment for either year when consistent with the plan and with State laws, rules, and regulations governing the expenditure of State appropriated funds.

Such budgets and expenditure reports as are required by the Social and Rehabilitation Service will be prepared on this basis. For the purposes of this section and § 220.78, "obligation" shall mean only bona fide encumbrances or commitments which are supported by contracts or other evidence of liability consistent with State purchasing procedure.

§ 220.78 Liquidation of obligations.

All obligations of the State agency incurred in carrying out the annual budget shall be liquidated within 2 years after the close of the fiscal year in which the obligation was incurred unless otherwsie authorized by the Social and Rehabilitation Service.

§ 220.79 Interest and refunds.

Interest earned on payments made under the Act and the regulations in this subpart and any amount refunded or repaid to the State shall be duly reported for any necessary adjustment in accordance with § 220.74(c).

§ 220.80 Apportionment of costs.

Where an expenditure is made for the benefit of this program and any other programs the amount to be charged as a cost of carrying out the State plan shall not exceed the amount arrived at by a reasonable apportionment except that, as may be authorized by applicable law and policy,the expenditure may be chargeable in whole either to this program or another program.

§ 220.81 Equipment and supplies.

All items of equipment or supply purchased in carrying out the annual budget shall be used only for purposes for which expenditures may be included in the

annual budget, and the State agency shall maintain a complete equipment inventory and adequate property controls covering such items.

§ 220.82 Effect of payments.

Neither approval of the State plan nor any payments to the State pursuant thereto shall be deemed to waive the failure of the State to observe before or after such administrative action any Federal requirements or the right or duty of the Federal government to withhold funds by reason thereof.

§ 220.83 Promulgation.

The Federal shares and the allotment percentages shall be promulgated between July 1 and August 31 of each even-numbered year, as required by and with the effect given by section 423(c) of the Act.

§ 220.84 Reallotment of funds.

Under Section 424 of the Act the amount of any allotment to a State under section 421 of the Act for any fiscal year which the State certifies will not be required for carrying out the State plan shall be available for reallotment to other States in accordance with the following:

(a) On or before dates fixed by the Social and Rehabilitation Service each State shall certify on an official form whether or not it will require the full amount of its allotment for carrying out the State plan for the fiscal year. If it is certified that the full amount will not be required, the certification shall contain the amount of the allotment not so required. If it is certified that the full amount will be required, and if the State has need for and will be able to use sums in excess of its allotment in carrying out the State plan, the State agency may so state in a letter to the Social and

Rehabiliation Service together with an estimate of the amount of such sums.

(b) The total amount certified by States as not being required for carrying out their State plan for the fiscal year shall be tentatively apportioned among those States which have stated need for and capacity to use sums in excess of their allotments in carrying out their plans: *Provided*, That in no event shall the amount of such apportionment to a State exceed the estimated amount of its request under paragraph (a) of this section, and any excess shall be tentatively apportioned among the remaining States. The Social and Rehabilitation Service promptly shall notify such States of such tentative apportionment. Each such State, after taking into consideration the amount of the tentative apportionment to it, shall notify the Social and Rehabilitation Service on or before a date fixed by the Social and Rehabilitation Service whether or not it desires to continue to be considered for purposes of the reallotment.

(c) In the event that all such States notify the Social and Rehabilitation Service that they desire to continue to be considered for purposes of the reallotment, each State shall develop jointly with the Social and Rehabilitation Service a revision to the State plan covering the amount tentatively apportioned to it.

(d) In the event that a State notifies the Social and Rehabilitation Service that it does not desire to continue to be considered for purposes of the reallotment the tentative apportionment shall be recomputed without the withdrawing State. Each of the remaining States shall be notified of the recomputation and shall develop jointly with the Social and Rehabilitation Service a revision to the State plan covering the amount tentatively apportioned to it under the recomputation.

(e) Reallotment shall be made among those States which have plan revisions pursuant to paragraph (c) or (d) of this section and which the Social and Rehabilitation Service determines (1) have need in carrying out their State plan for the additional funds and (2) will be able to use such additional funds during the fiscal year.

(f) In computing the amount of the realloted funds to each State consideration shall be given to the population under the age of 21 and the per capita income of each such State as compared with the population under the age of 21 and the per capita income of all such States participating in the reallotment.

(g) Any amount realloted to a State shall be deemed part of its allotment under Section 421 of the Act.

PART 222—SERVICE PROGRAMS FOR AGED, BLIND OR DISABLED PERSONS: TITLES I, X, XIV, AND XVI OF THE SOCIAL SECURITY ACT

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SOURCE: The provision of this Part 222 appear at 35 F.R. 18170, Nov. 26, 1970, unless otherwise noted.

Subpart A—Mandatory Provision for all Service Programs

§ 222.1 General

A State plan under title I, X, XIV, or XVI of the Social Security Act that provides for services to aged, blind, or disabled persons, must:

(a) Describe the services available under the State plan to current applicants and recipients.

(b) Identify which, if any, of the optional groups described in § 222.55 are also eligible for services.

(c) Specify the services to be made available to each such group.

(d) Commit the State to meet the requirements in this Subpart.

§ 222.2 Advisory committees.

(a) An advisory committee on aged, blind and disabled must be established at the State level and at the local levels where the programs are locally administered, except that in local jurisdictions with small caseloads alternate procedures for securing similar participation may be established. The advisory committee, which may be combined with AFDC—CWS advisory committee (as required in § 220.4 of this chapter), will:

(1) Advise the principal policy setting and administrative officials of the agency and have adequate opportunity for meaningful participation in policy development and program administration, including the furtherance of recipient participation in the program of the agency.

(2) Include representatives of other State agencies

concerned with services, representatives of professional, civic or other public or private organizations, private citizens interested and experienced in service programs, and recipients of assistance or services of their representatives who shall constitute at least one-third of the membership.

(3) Be provided such staff assistance from within the agency and such independent technical assistance as are needed to enable it to make effective recommendations.

(4) Be provided with financial arrangements, where necessary, to make possible the participation of recipients in the work of the committee structure.

(b) The State agency must maintain information about the structure and functions of the State and local advisory committees with representation from the aged, blind, and disabled; their relationship to other boards and committees associated with the State and local agencies; and the system for selecting recipients or their representatives. The State advisory committee for aged, blind, and disabled must be established no later than 120 days after plan approval.

§ 222.3 Training and use of subprofessionals and volunteers.

The State agency must conform to the regulations in Part 225 of this chapter, Training and Use of Subprofessionals and Volunteers.

§ 222.4 Relationship to and use of other agencies.

(a) There must be maximum utilization of and coordination with other public and voluntary agencies,

including with respect to the latter their experience as well as their facilities, providing services similar or related to the services provided under the plan, where such services are available without additional cost.

(b) Consideration must be given to the appropriate use of other public and voluntary agencies as sources for the purchase of care and services and such use must be based on a determination that required program standards will be met, and a comparison of the effectiveness with which the services are likely to be rendered and the anticipated costs thereof.

(c) The State plan must show ways in which public and voluntary agencies will be used, including types of services to be purchased, if any.

(d) The State agency must conform to the regulations in Part 226 of this chapter, Purchase of Services under Public Assistance Programs.

§ 222.5 Availability of services.

All of the services contained in the State plan must be available, accessible, and provided with reasonable promptness to all eligible persons needing the services.

§ 222.6 Notification of available services.

Each applicant and recipient must be informed of the services available from the agency and extended an opportunity to express his need and to request services.

§ 222.7 Freedom to accept or reject services.

Eligible individuals must be free to determine whether to accept or reject service from the agency.

§ 222.8 Staff development.

There must be staff development on a continuing and progressive basis for all staff responsible for the development and provision of services. Such staff development shall include orientation, in-service training, and educational leave.

§ 222.9 Appeals, fair hearings, and grievances.

(a) There must be provision under the agency's established fair hearings procedures for a fair hearing under which applicants and recipients may appeal denial of or exclusion from a service program or failure to take account of recipient choice of a service. Provisions governing fair hearings in relation to financial and medical assistance shall apply. The results of appeals pertaining to services must be formally recorded and made available to the State advisory committee on services and all applicants and recipients must be advised of their right to appeal and the procedures for such appeal.

(b) There must be a system through which recipients may present grievances about the operation of the service program.

§ 222.10 Reports and evaluations.

Such reports and evaluations must be furnished to the Secretary as he may speficy, showing scope, results, and costs of services for aged, blind, or disabled persons.

§ 222.11 Special service units.

If the State agency establishes special service units in metropolitan or rural settings, it must maintain information on the specific purposes and functions of such special service units.

§ 222.12 Services for protective payment cases.

If the State plan provides for protective assistance payments on behalf of recipients, there must be provision of services to such recipients in accordance with applicable policies (see § 234.70 of this chapter).

§ 222.13 Services for aged leaving mental hospitals.

If the State plan under title I or XVI provides for assistance payments to aged individuals in mental hospitals, the plan must provide for services to such recipients when leaving such hospitals, in accordance with the requirements of section 2(a)(12)(C) or section 16.02(a)(16)(C) of the Social Security Act.

Subpart B—Additional Mandatory Provisions for Federal Financial Participation at 75 Percent

§ 222.20 General.

A State plan under title I, X, XIV, or XVI, to be eligible for 75 percent Federal financial participation in the costs of providing services, must:

(a) Commit the State to meet the requirements of this subpart.

(b) Commit the State to progress in the extension and improvement of services.

(c) Provide for the submission of such implementation and progress reports as may be specified.

Organization and Administration

§ 222.21 Policy and program development and implementation.

In administering the program there must be:

(a) A State level position (or positions) with authority and responsibility for the direction and development of the adult services program.

(b) The use of State staff to supervise local agency performance in developing, maintaining, improving and extending services, to assure proper program implementation.

§ 222.22 Individual service plans.

There must be assessment of the individual's service needs and implementation of individual service plans in all cases where it is agreed between the agency and the applicant, or the person applying on his behalf, for service that service is needed. Each plan must be reviewed as often as necessary but at least annually, to assure that it is practically related to the individual's needs and is being effectively implemented. Each service plan and the services provided must be recorded.

§ 222.23 Full-time staff for services.

(a) The functions of arranging or providing services to individuals should, to the maximum extent feasible, be performed by persons other than those who determine eligibility for financial and medical assistance and provide financial assistance.

(b) There must be adequate numbers of full-time staff assigned to service functions at all levels of agency operations and, to this end, there must be progress toward the objectives of relieving all staff of nonservice functions. (This includes service at intake, i.e., providing information, screening, and referral within the agency and community for all aged, blind, or disabled persons seeking agency help; and determining need for specific services.)

§ 222.24 Use of professional staff.

There must be adequate numbers and suitable qualifications for personnel drawn from appropriate disciplines, e.g. social work, rehabilitation counseling, home economics, to plan, develop, and supervise services and, when applicable, to provide specialized services to aged, blind, or disabled persons; and there must be an adequate system of career development and progression for such individuals.

§ 222.25 Caseloads and workload standards.

The State agency must make available on request an explanation of how the quantity and quality of services will be maintained in instances where the number of personnel performing direct service functions results in a caseload or workload higher than that in effect during fiscal year 1968 for the service programs in the States which qualified for Federal financial participation at the 75-percent rate.

§ 222.26 Bilingual interpreters.

Provision must be made for bilingual staff or interpreters when there are substantial numbers of non-English-speaking applicants and recipients.

§ 222.27 Delivery and utilization of services.

(a) There must be progress in achieving organizational patterns and simplified administrative procedures that assure effective delivery and utilization of services.

(b) The State plan must also provide for continued assessment and necessary adaptations to achieve this requirement.

§ 222.28 Public information program.

There must be provision for a continuing program of public information specifically designed to assure that information about all of the services the State agency provides in its plan, and how they may be secured, is effectively and appropriately promulgated throughout the State in a manner calculated to reach current and potential applicants and recipients for service and sources of referral of potential applicants. When there are substantial numbers of non-English-speaking applicants and recipients the informational materials must also be published in the native language most commonly used in the area.

Mandatory Services

§ 222.40 General.

The State plan must provide for the required services (§§ 222.41—222.45) to be made available to all persons eligible under the State plan.

§ 222.41 Information and referral services.

Such services must be available, without regard to eligibility for assistance or other service, to any aged, blind, or disabled person seeking information or advice with respect to his needs which can properly be met by the provision of direct information or referral to appropriate community resources.

§ 222.42 Protective services.

Services must include, but are not limited to:

(a) Arranging for medical (including psychiatric) services to evaluate, and whenever possible, safeguard and improve the circumstances of those with serious impairments.

(b) Arrangments for guardianship, commitment, or other protective placement when necessary by the agency directly or through referral to another appropriate agency.

(c) Provision of services to assist individuals to move from situations which are or are likely to become hazardous to their health and well-being.

(d) Cooperating and planning with the courts as necessary on behalf of individuals with serious mental impairments.

§ 222.43 Services to enable persons to remain in or to return to their homes or communities.

Services must include, but are not limited to:

(a) Assistance in locating suitable independent living arrangements or arrangements for placement in foster family or protected care settings.

(b) Enlisting the help of interested relatives, friends, and other resources to assist the person to remain in or to return to the community and to maintain himself in the selected environment.

(c) Assisting the individual to carry out necessary medical, health, and health maintenance plans.

(d) Assistance in securing any additional special arrangements or supportive services that will contribute to a satisfactory and adequate social adjustment of the individual.

§ 222.44 Services to meet health needs.

Services must include, but are not limited to:

(a) Assistance in securing necessary diagnostic, preventive, remedial, ameliorative, and other health

services (including prosthetic, orthotic, and assistive aids) available under Medicare, Medicaid (or other agency health services program) and from other agencies or providers of health services.

(b) Assistance in making arrangements for transportation to and from health resources.

(c) Planning with the individual relatives, or other appropriate persons, to assist the individual in carrying out medical recommendations.

(d) Maintaining necessary liaison with the physician, nurse, institution, or other provider of health services to assure the provision of social services necessary to carry out medical recommendations.

(e) In medical emergencies, obtaining services of a physician; arranging care of dependents and other social services required as a result of the individual's medical emergency.

(f) Providing, as necessary, the services of escorts and billingual interpreters, who, whenever possible, shall be subprofessional staff who are residents of neighborhoods in which the persons reside.

§ 222.45 Self-support services for the handicapped.

Such services must include, but are not limited to:

(a) Exploring interests and potentials for self-support in whole or in part.

(b) Individual counseling, necessary to deal with family barriers which prevent or limit individuals in their use of training and employment opportunities.

(c) Providing for referral to and use of public and voluntary agencies in the fields of vocational

rehabilitation, health, education, and employment, including special attention to the capabilities of rehabilitation centers and sheltered workshops, community action agencies, neighborhood centers, and similar organizations.

§ 222.46 Homemaker services.

By April 1, 1974, State plans must provide for homemaker services which must:

(a) Include home management, home maintenance, and personal care services for adults who are determined by the agency to need this service.

(b) Be in accord with the recommended standards of related national standard setting organizations such as the National Council for Homemaker Service.

§ 222.47 Special services for the blind.

By April 1, 1974, State plans must provide for special services for the blind.

§ 222.50 Community planning.

(a) There must be provision for community planning by the staff of the agency at the State and local levels, with authority and responsibility assigned to assure development and utilization of community services and resources to meet the needs of low-income groups.

Subpart C—Optional Provisions and Services

§ 222.55 Coverage of optional groups for services.

(a) The agency may elect to provide services to all or to reasonably classified subgroups of the following:

(1) Aged, blind, or disabled persons who are former applicants for or recipients of financial assistance who

request services or on whose behalf services are requested. See § 222.86(b) for Federal financial participation.

(2) Aged, blind, or disabled persons who request services, or on whose behalf services are requested, and who are likely to become applicants for or recipients of financial assistance, i.e., those who:

(i) Are not money payment recipients but are eligible for medical assistance under the State's title XIX plan.

(ii) Are likely, within 5 years, to become recipients of financial assistance.

(iii) Are at or near dependency level, including those in low income neighborhoods and among other groups that might be expected to include more aged, blind, or disabled assistance cases that other low-income groups, where the services are provided on a group basis.

(b) All aged, blind, or disabled persons in the above groups or a selected reasonable classification of such persons with common problems or common service needs may be included.

§ 222.56 Range of optional services.

A State may elect to include in its State plan under title I, X, XIV, or XVI of the Social Security Act provision for optional services as provided for in §§ 222.57—222.61 in the costs of which 75 percent Federal financial participation is available, provided that the State plan also meets all of the requirements contained in Subparts A and B of this part.

§ 222.57 Services to individuals to improve their living arrangements and enhance activities of daily living.

Services may include any or all of the following individual service items: Housing improvement and assistance services; services to adults in foster care; day care; chore services; home delivered meals; companionship services; education services related to consumer protection and money management; and homemaker services.

§ 222.58 Services to individuals and groups to improve opportunities for social and community participation.

Services may include any or all of the following individual service items: Assistance in obtaining recreational and educational service; opportunities to participate in volunteer and paid service roles with various community agencies and organizations; provision of social group services in agency or other settings, e.g., neighborhood centers, multipurpose senior centers.

§ 222.59 Services to individuals to meet special needs.

Services may include any or all of the following individual service items: Legal services for persons desiring the help of lawyers with their legal problems (see separate policies governing the provision of such services); family planning; services for such groups as alcoholics, drug addicts, and mentally retarded individuals; special services to the blind, deaf, and other disabled individuals.

§ 222.60 Other services.

A State may submit other optional services for consideration and approval by the Department of Health, Education, and Welfare.

§ 222.61 Consultant services.

A State may use those services which consist of advice and consultation provided by persons who are expert in such matters as medical (including psychiatric), social, legal, educational, psychological, nutritional, and employment problems of individuals, for the purposes of assisting agency staff, as necessary, in diagnosing and developing service plans to meet individual applicant or recipient needs and in the development and evaluation of agency service programs.

Subpart D—Definitions

§ 222.65 Chore services.

Chore services means services in performing light work, or household tasks, which eligible persons are unable to do for themselves because of frailty or other conditions and which do not require the services of a trained homemaker or other specialist. Chore services may include such activities as: Help in shopping, lawn care, simple household repairs, running errands, etc.

§ 222.66 Community planning.

Community planning means activities of the staff of the agency, at the State and local levels, in providing leadership in the planning, development, extension, and improvement of the broad range of services, facilities, and opportunities required to prevent dependency for low income adults and to meet the current and anticipated service needs of all aged, blind, or disabled applicants and recipients. Staff activities include work

with other agencies, organizations and interested citizens' groups, including State and local commissions on aging and the blnd, in stimulating community support and action on behalf of all the aged, blind, or disabled so that in developing and extending community services to the total group, applicants and recipients will also benefit.

§ 222.68 Day care services.

Day care services means services provided during the day to eligible persons in a protective setting approved by the State agency for purposes of personal care and to promote their social, health, and emotional well-being through opportunities for companionship, self-education and other satisfying leisure time activities.

§ 222.69 Education services related to consumer protection and money management.

Education services related to consumer protection and money management mean services that help eligible persons learn how to manage household budgets effectively and to use sound consumer practices.

§ 222.70 Home delivered meals.

Home delivered meals means service which consists of preparing and delivering one or more hot meals daily to the homes of eligible persons who are unable to obtain or prepare nourishing meals.

§ 222.71 Homemaker services.

Homemaker services means home management and maintenance services, and personal care services, provided to maintain, strengthen and safeguard the functioning of eligible persons in their own homes where no responsible person is available for this purpose.

§ 222.72 Housing improvement and assistance services.

Housing improvement and assistance services means services, in cooperation with the applicant or recipient, landlord, and others to assist in the upgrading of substandard rental housing in which the applicant or recipient resides; to obtain repairs to his own home if substandard or unsuitable; or to find other housing in the community suitable and adequate to his needs at prices which he can afford to pay; and to help to increase the supply and availability of safe and suitable housing for applicants or recipients who have housing problems through cooperative community planning activities with appropriate individuals and groups in the community.

§ 222.73 Protective services.

Protective services means a system of services (including medical and legal services which are incidental to the service plan) which are utilized to assist seriously impaired eligible individuals who, because of mental or physical dysfunction, are unable to manage their own resources, carry out the activities of daily living, or protect themselves from neglect or hazardous situations without assistance from others and have no one available who is willing and able to assist them responsibily.

§ 222.74 Services to adults in foster care.

Services to adults in foster care mean services to eligible persons to assure placement in settings approved by the apporpriate State and/or local authority and suitable to the needs of each individual; assure that the person receives proper care in such placement; and to determine continued appropriateness of and need for placement through periodic reviews, at least annually.

§ 222.75 Services to meet health needs.

Services to meet health needs mean services provided for the purpose of assisting eligible persons to attain and retain as favorable a condition of health as possible by helping them to identify and understand their health needs and to secure and utilize necessary medical treatment as well as preventive and health maintenance services including services in medical emergencies.

§ 222.76 Social group services.

Social group services mean use of group methods to provide eligible persons with opportunities for group experiences. Such experiences can help individuals to cope with personal problems, develop capacities for more adequate social and personal functioning, relieve social isolation, develop friendships and mutual aid, and increase understanding between the group and the agency.

§ 222.77 Special services for the blind.

Special services for the blind means services related to age, presence of other disabilities and amount of residual vision. Such services may include assistance in securing mobility training, personal care, home management and communication skills; also arrangements for talking book machines and obtaining special aids and appliances to solve or reduce problems arising from blindness as well as help in securing safety items, particularly those necessary to assure safe housing and prevent accidents. Arrangements for educational counseling to assure appropriate classroom placement and when timely, guidance from a school and/or rehabilitation program to prepare for a vocation are essential for the young blind to reach their full potential. Additionally, services may include referral of parents of blind children to agencies with special counseling competence in this field.

Subpart E—Federal Financial Participation

§ 222.85 General.

Federal financial participation is available in expenditures as found necessary by the Secretary:

(a) For the proper and efficient administration of the plan,

(b) For the costs of providing the services for the groups of aged, blind, or disabled,

(c) For carrying out the activities described in Subparts A, B, and C of this part that are included in the approved State plan. Such participation will be at the rates prescribed in this subpart.

§ 222.86 Persons eligible for services.

Federal financial participation is available under this subpart only for services provided to:

(a) An aged, blind, or disabled person applying for or receiving assistance under the plan.

(b) The groups defined in § 222.55: Former and potential applicants or recipients who request services or on whose behalf services are requested, and other individuals requesting information and referral service only. In respect to any aged, blind, or disabled person who has formerly been an applicant for or recipient of assistance, counseling and casework services may be provided. Other services may be provided only to those aged, blind, or disabled persons who have received assistance within the previous 2 years or who qualify under the definition of potential applicants or recipients (see § 222.55 (a) (2)).

§ 222.87 Sources for furnishing services.

Federal financial participation is available for services furnished:

(a) By State or local agency staff, i.e., full- or part-time employed staff; and volunteers, or

(b) By purchase, contract, or other cooperative arrangements with public or private agencies or individuals, provided that such services are not available without cost from such sources.

§ 222.88 Provisions governing costs of certain services.

(a) *Medical and assistance costs.* Federal financial participation will not be available under this subpart in expenditures for subsistence and other assistance items or for medical or remedial care or services, except:

(1) For subsistence and medical care when they are provided as essential components of a comprehensive service program a facility and their costs are not separately identifiable, such as, in a rehabilitation center, day care facility, or neighborhood service center;

(2) For medical and remedial care and services as part of family planning services;

(3) For medical diagnosis and consultation when necessary to carry out services responsibilities, e.g., for recipients under consideration for referral to training and employment programs.

(b) *Vocational rehabilitation services.* Federal financial participation is not available in the costs of providing vocational rehabilitation services for handicapped individuals as defined in the Vocational Rehabilitation Act except pursuant to an agreement

with the State agency administering the rehabilitation program. This applies to provision of services by staff of the agency and purchase.

(c) *Services related to adult foster care.* Federal financial participation is available in the costs of staff in providing services related to adult foster care, i.e., recruitment, study, and approval of foster family homes (except staff primarily engaged in the issuances of licenses or in the enforcement of standards); services to adults in foster care, and work with foster families and staff of institutions caring for adults, such as homes for the aged. Payments for the foster care itself are assistance payments and are, therefore, not subject to the service rate of Federal financial participation.

(d) *Services provided in behalf of aged, blind, or disabled persons.* Federal financial participation is available for services provided in behalf of aged, blind, or disabled persons, e.g., community planning; assuring accessibility to resources to which the person is entitled; and studies of service needs and results.

§ 222.89 Kinds of expenses for which Federal financial participation is available.

(a) Salary and travel costs of service workers (including travel and expenses of volunteers) and their supervisors giving full-time to services and for staff entirely engaged (either at State or local level) in developing, planning, and evaluating services.

(b) Salary costs of service-related staff such as, supervisors, clerks, secretaries, and stenographers, which represent that portion of the time spent in supporting full-time service staff.

(c) Related expenses of staff performing service or service-related work under paragraphs (a) and (b) of

this section in porportion to their time spent on services, such as communication, equipment, supplies, and office space.

(d) Definitions: Applicable to staff performing service functions.

(1) *Full-time service work.* (i) Persons performing full-time on functions related to the provision of services means persons assigned exclusively to such functions and does not relate to the number of hours of employment. Services to families and children may also be carried.

(ii) It is not necessary to maintain daily time records for this purpose but it is expected that States will check periodically to assure that persons assigned on a full-time basis are performing substantially on this basis.

(iii) A full-time worker can be expected to receive questions from recipients (and former and potential) related to eligibility and the amount of payment or medical benefits and to make this information available to staff responsible for eligibility and related functions, Such workers may not carry the responsibility for securing information or taking the actions in respect to determining initial and continuing eligibility for financial or medical assistance or to change the amount of financial assistance being provided.

(2) *Meaning and illustrations of service work.* Service work means activity of staff in providing the services and carrying out the related responsibilities specified in Subparts A, B, and C of this part. This includes activities of such staff as caseworkers, homemakers, and community planning staff.

(3) *Meaning and illustrations of service-related work.* Service-related work means activity of staff other than

service workers which is necessary to administer a service program fully. This includes secretaries, stenographers, and clerks serving service staff; supervisors of service workers and their supervisors, staff responsible for developing and evaluating service policies, and staff collecting and summarizing financial and statistical data on services either at State or local level.

(4) *Staff.* Staff individually or in groups performing service or service-related work includes professional, subprofessional (e.g., recipients and other workers of low income), and volunteer staff.

(e) Other expenses related to the provision of service in support of full-time service staff, including a portion of the salary costs of any agency person (except the service worker who must be on a full-time basis) who is working part-time on service functions (either at the State or local agency level). Such expenses include the portion of salary costs of supervisors related to supervision of service work, a portion of fiscal costs related to services, a portion of research costs related to services, a portion of salary costs of field staff, etc.

(f) Costs of services purchased when purchased in accordance with applicable policies (see Part 226 of this chapter).

(g) Travel and related costs for eligible aged, blind, or disabled persons to community facilities and resources.

(h) Costs of State and local advisory committees, including expenses of attending meetings, supportive staff and other technical assistance. (See § 222.2 (a) (3) and (4)).

(i) Costs of administrative and supervisory staff attending public or voluntary agency meetings

pertinent to the development or implementation of Federal or State service policies and programs.

(j) Costs of operation of agency facilities used solely for the provision of services. Costs may include expenditures for staff; space, including minor renovating, heat, utilities, and cleaning furnishings; program supplies, equipment and materials; food and foodpreparation; and liability oand other insurance protection. Costs of construction and major renovations are not matchable as services. Appropriate distribution of costs is necessary when other agencies use such facilities for the provision of their services, such as in comprehensive neighborhood service centers.

(k) Cost of consultant services (see § 222.61).

(l) Costs of providing home-delivered meals, but not including the raw food cost involved.

(m) Cost incurred on behalf of an eligible person for guardianship or commitment (e.g., expenditures for court costs, attorney's fees and guardianship, and other costs attendant upon securing protective services).

(n) Costs of establishing and operating a continuing program supplies, equipment and materials; food and food preparation; and liability and other insurance all recipients, and to potential applicants and recipients (if covered by the State plan) who may need them.

(o) Costs of public liability and other insurance protection necessary for the proper and efficient administration of the service program.

(p) Costs of chore services but excluding any items included in the individual's money grant.
grant.

§ 222.90 Rates of Federal financial participation.

(a) Federal financial participation at the rate of 75 percent (see also paragraph (c) of this section) is available for the service costs identified in §§ 222.88 and 222.89, and training and staff development, provided that the State plan meets all of the requirements of Subparts A and B of this part.

(b) The total costs of salaries and travel of workers carrying responsibility for both services and elibility functions and supervisory costs related to such workers, and all or part of the salaries of supporting secretarial, stenographic, or clerical staff depending on whether they work full-time or part-time for the workers specified in this paragraph (b), are subject to the 50 percent rate of Federal financial participation.

(c) Federal financial participation at the 50-percent rate is available in the costs of the following activities that are separate form but relevant to the costs of services:

(1) Salaries and travel of staff primarily engaged in determining eligiblility and their supervisors and supporting staff (clerks, secretaries, stenographers, etc.).

(2) Salaries and travel of staff primarily engaged in developing eligibility provisions and the determination processes (either at the State or local agency level).

(3) Expenses related to such staff, and for staff specified in paragraph (b) of this section, such as for communication, equipment, supplies and office space.

(4) Other expenses of administration of services not specified at the 75-percent rate.

§ 222.91 Donated private funds.

(a) Donated private funds for services may be considered as State funds in claiming Federal reimbursement where such funds are:

(1) Transferred to the State or local agency and under its administrative control; and

(2) Donated on an unrestricted basis (except that funds donated to support a particular kind of activity, e.g., homemaker services, or to support a particular kind of activity in a named community, are acceptable provided the donating organization is not the sponsor or operator of the activity being funded).

(b) Donated private funds for services may not be considered as State funds in claiming Federal reimbursement where such funds are:

(1) Contributed funds which revert to the donor's facitlity or use.

(2) Donated funds which are earmarked for a particular individual or for members of a particular organization.

PART 225 - TRAINING AND USE OF SUB-PROFESSIONALS AND VOLUNTEERS

Sec.

225.1 Definitions.
225.2 State plan requirements.
225.3 Federal financial participation.

AUTHORITY: The provisions of this part 225 issued under sec. 1102, 49 Stat. 647; 42 U.S.C. 1302.

SOURCE: The provisions of this Part 225 appear at 34 F.R. 1319, Jan. 28, 1969, unless otherwise noted.

§ 225.1 Definitions.

(a) The classification of subprofessional staff as community service aides refers to persons in a variety of positions in the planning, administration, and delivery of health, social, and rehabilitation services in which the duties of the position are composed of tasks that are an integral part of the agency's service responsibilities to people and that can be performed by persons with less than a college education, by high school graduates, or by persons with little or no formal education.

(b) "Full-time or part-time employment" means that the person is employed by the agency and his position is incorporated into the regular staffing pattern of the agency. He is paid a regular wage or salary in relation to the value of services rendered and time spent on the job.

(c) The term "Volunteer" describes a person who contributes his personal service to the community through the agency's human services program. He is not a replacement or substitute for paid staff but adds new dimensions to agency services, and symbolizes the community's concern for the agency's clientele.

(d) "Partially paid volunteers" means volunteers who are compensated for expenses incurred in the giving of services. Such payment does not reflect the value of the services rendered, or the amount of time given to the agency.

§ 225.2 State plan requirements.

Effective July 1, 1969, the State plan for OAA, AFDC, AB, APTD, AABD or MA under title I, IV (part A), X,

XIV, XVI or XIX of the Social Security Act or for CWS under the title IV (part B) of the Act (see 42 C.F.R. Part 201), or for MCH and CC under title V of the Act (see 42 CFR Part 200), must:

(a) Provide for the training and effective use of subprofessional staff as community service aides through part-time or full-time employment of persons of low income and, where applicable, of recipients and for that purpose will provide for:

(1) Such methods of recruitment and selection as will offer opportunity for full-time or part-time employment of persons of low income and little or no formal education, including employment of young and middle aged adults, older persons, and the physically and mentally disabled, and in the case of a State plan under title I, IV (part A), X, XIV, XVI or XIX of recipients; and will provide that such subprofessional positions are subject to merit system requirements except where special exemption is approved on the basis of a State alternative plan for recruitment and selection among the disadvantaged of persons who have the potential ability for training and job performance to help assure achievement of program objectives;

(2) An administrative staffing plan to include the range of service personnel of which subprofessional staff are an integral part;

(3) A career service plan permitting persons to enter employment at the subprofessional level and, according to their abilities, through work experience, pre-service and in-service training and educational leave with pay, progress to positions of increasing responsibility and reward;

(4) An organized training program, supervision, and supportive services for subprofessional staff; and

(5) Annual progressive expansion of the plan to assure utilization of increasing numbers of subprofessional staff as community service aides, until an appropriate number and proportion of subprofessional staff to professional staff are achieved to make maximum use of subprofessionals in program operation.

(b) Provide for the use of nonpaid or partially paid volunteers in providing services and in assisting any advisory committees established by the State agency and for that purpose provide for:

(1) A position in which rests responsibility for the development, organization, and administration of the voulenteer program, and for coordination of the program with related functions;

(2) Methods of recruitment and selection which will assure participation of volunteers of all income levels in planning capacities and service provision;

(3) A program for organized training and supervision of such volunteers;

(4) Meeting the costs incident to volunteer service and assuring that no individual shall be deprived of the opportunity to serve because of the expenses involved in such service; and

(5) Annual progressive expansion of the numbers of volunteers utilized, until the volunteer program is

adequate for the achievement of the agency's service goals.

§ 225.3 Federal financial participation.

Under the State plan programs under Titles I, IV (Parts A and B), V, X, XIV, XVI, and XIX of the Act, Federal financial participation in expenditures for the recruitment, selection, training, and employment and other use of subprofessional staff and volunteers is available at the rates and under related conditions established for training, services, and other administrative costs under the respective titles.

PART 226—PURCHASE OF SERVICES UNDER PUBLIC ASSISTANCE PROGRAMS

Sec.
226.1 State plan requirements.
226.2 Federal financial participation.

AUTHORITY: The provisions of this Part 226 issued under sec. 1102, 49 Stat. 647; 42 U.S.C. 1302.

§ 226.1 State plan requirements.

(a) A State plan under Title I, IV—Part A, X, XIV, or XVI of the Social Security Act, which authorizes the provision of services by purchase from other State or local public agencies, from nonprofit or proprietary private agencies or organizations, or from individuals, must, with respect to services which are purchased:

(1) Include a description of the scope and types of services which may be purchased under the State plan;

(2) Provide that the State or local agency will retain continuing, basic responsibility for determination as to:

(i) The eligibility of individuals for services; and

(ii) The authorization, selection, quality, effectiveness, and execution of a plan or program of services suited to the needs of an individual or of a group of individuals;

(3) Provide that the State agency will work with established and newly organized suppliers of purchased services to provide consultation and technical assistance, to assure satisfactory performance in providing such services, including periodic review, and to develop new and more effective approaches and methods of delivering purchased services;

(4) In the case of services authorized under the Vocational Rehabilitation Act, provide that such services will be obtained from the State vocational rehabilitation agency when that agency is willing and able to provide them, and that such services will be purchased from another source only when they are not obtainable from the State vocational rehabilitation agency;

(5) Assure progressive development of arrangements with a number and variety of agencies and other sources which meet applicable standards as to quality of services and rates of payment, with the aim of providing opportunities for individuals to exercise choice with regard to the source of purchased service;

(6) Assure that the sources from which services are purchased are licensed, approved as meeting State licensing standards, meet applicable accrediting standards, or in the absence of licensing or accrediting standards, meet standards or criteria established by the State agency to assure quality of service, including standards appropriate for services provided by new self-help groups and other organizations for which licensing or accrediting do not exist; and

(7) (1) Provide for the establishment of rates of payment for such services which:

(a) Do not exceed the amounts reasonable and necessary to assure quality of services, and in the case of services purchased from other public agencies, are in accordance with the cost reasonably assignable to such services; and

(b) Whenever possible are based on consideration of full cost of the services;

(ii) Describe the methods used in establishing and maintaining such rates; and

(iii) Indicate that information to support such rates of payment will be maintained in accessible form.

(b) In the case of services provided, by purchase, as emergency assistance to needy families with children under Title IV—Part A, the State plan may provide for an exception from the requirements in subparagraphs (5), (6), and (7) of paragraph (a) of this section, but only to the extent and for the period necessary to deal with the emergency situation.

(c) All other requirements governing the State plans listed in paragraph (a) of this section are applicable to the purchase of services, including:

(1) General provisions such as those relating to single State agency, fair hearings and grievances, safeguarding of information, civil rights, and financial control and reporting requirements; and

(2) Specific provisions as to the programs of services such as those on required services, State-wideness and maximum utilization of other agencies providing services, to the extent feasible.

[34 F.R. 1243, Jan. 25, 1969]

§ 226.2 Federal financial participation.

(a) Federal financial participation is available in expenditures for purchase of services under the State plans listed in § 226.1 to the extent that payment for purchased services is in accordance with rates of payment established by the State which do not exceed the amounts reasonable and necessary to assure quality of service and, in the case of services purchased from other public agencies, the cost reasonably assignable to such services.

(b) Services which may be purchased with Federal financial participation are those for which Federal financial participation is otherwise available under Title I, IV—Part A, X, XIV, or, XVI of the Social Security Act and which are included under the approved State plan.

(c) Payments for subsistence (including payments for foster care), other items of individual or family need normally included in assistance payments, and medical or remedial care or services are not considered to be service costs. However, Federal financial participation is available in expenditures for the purchase of services which include subsistence or medical care items (as contrasted with payments made to provide financial or medical assistance), such as:

(1) Subsistence and medical care when they are included as an essential component of the furnishing of services in an institutional setting and cannot be separately identified, such as in a comprehensive rehabilitation center; and

(2) Under Title IV—Part A of the Act, medical care, for such items as:

(i) Family planning services; and

(ii) Medical examinations required for child care staff, when not otherwise available.

(For details as to these and other special conditions, see the pertinent regulations, such as those for emergency assistance to needy families with children, § 233.120 of this chapter, and services to children and families under Title IV—Part A of the Act, to be published at a later date.)

[34 F.R. 1244, Jan. 25, 1969]

APPENDIX D

Supreme Court, U. S.
FILED
FEB 21 1978
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1977

No. 77-1181

**Department of Human Resources
(formerly State Department of Public Welfare)
of the State of Texas,**

Petitioner

v.

**Joseph A. Califano, Jr.,
Secretary of Health, Education and Welfare,
and
Michael Blumenthal,
Secretary of the Treasury,**

Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

John L. Hill
Attorney General of Texas

David M. Kendall
First Assistant Attorney General
of Texas

Frank C. Cooksey
(Acting as Special Assistant
Attorney General)
Swift and Swift, P.C.
1444 American Bank Tower
Austin, Texas 78701

Attorneys for the Petitioner

APPENDIX D

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

MEMORANDUM

DATE: **Dec 21 1972**

To: SRS Regional Commissioners

From: Associate Administrator for Field Operations

Subject: Guidelines Regarding Retroactive and Current Claims for Social Service Expenditures

The attached memorandum has been signed by the Administrator and is on its way to you through normal channels. This memorandum is intended to expedite its transmittal to you and to provide some guidance as to its use.

Since the intent of the memorandum is to provide you and interested State people with a better understanding of the SRS policy, it should be shared with State people freely and discussed with them in detail. We would hope that this will provide a common ground for later meetings with individual States on the allowability of State claims. On the basis of such discussion and your own review, we would very much appreciate receiving your comment and that of the States.

In addition, if you consider it desirable, we will provide the opportunity for further discussion at an anticipated special meeting of

Regional Commissioners to be held on or around January 16, 1973. Further information on this special meeting will be sent to you soon.

/s/
William J. Page, Jr.

Attachment

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
SOCIAL AND REHABILITATION SERVICE

MEMORANDUM

Date: DEC 20 1972

To: SRS Regional Commissioners

From: Administrator
Social and Rehabilitation Service

Subject: Interpretation of Federal Regulations in Determining the Allowability of State Claims for Federal Financial Participation in Expenditures for Social Services

In response to inquiries from Regional Offices concerning interpretation of existing Federal Regulations regarding retroactive and current claims for social service expenditures the following guidelines are provided. It is important that these guidelines be consistently applied not only in the consideration of retroactive claims but also in the financial review and audit of State expenditures for periods in which the currently existing Federal Regulations and guides are and have been in effect.

Issue #1

When, if ever, are subsistence and medical care costs allowable as essential components of a comprehensive service program of an institution or residential facility?

Response

Federal Regulations (45 CFR 220.61(d)(1)(i) and 222.88(a)(1)) authorize Federal Financial Participation in expenditures for subsistence and medical care when they are provided as essential components of a comprehensive service program of a facility and their costs are not separately identifiable. These regulations give specific examples of such cases (i.e. rehabilitation center, day care facility, maternity home (AFDC) and neighborhood service center (adult)).

The test for separate identifiability of costs is whether or not an accountant or an auditor can separately identify the costs, having conducted a financial review of the accounts and the cost allocation methods. Implicitly, therefore, since costs can always be separately identified, the question of separate identifiability is not a useful concept. There is obvious intent, under these regulations, to allow subsistence and medical care costs under certain circumstances. Subsistence or other maintenance assistance items, either regular or special, and any costs of medical or remedial care or services are not allowable except:

a. When such items are provided as essential components of a comprehensive program of a service facility and the services are provided as part of an individual service plan; and

b. Where the service facility is one of the following types: maternity home for

unwed mothers; home for emotionally disturbed children (which is not a mental institution); emergency shelter and care facility for abandoned, abused, neglected, homeless, or exploited children; vocational rehabilitation center; residential treatment center (non-hospital) or halfway house for alcoholics or drug addicts; halfway house for persons requiring transitional services to the community from mental or penal institutions, or who require the services of a halfway house as part of a plan to preclude such institutionalization; and

c. When such items are provided within the following time limits for each stay of an individual at such a service facility:

- maternity home for unwed mothers - as needed
- home for emotionally disturbed children (which is not a mental institution) - 6 months
- emergency shelter and care facility for abandoned, abused, neglected, homeless, or exploited children - 14 days
- vocational rehabilitation center - as specified in the individual's vocational rehabilitation plan
- residential treatment center (non-hospital) or halfway house for alcoholics - 30 days - for drug addicts - 90 days

- Other halfway houses - 6 months; and

d. When the service facilities are not a part of a full-time residential mental or penal institution (where the facility is being administered by the same organization that administers a mental or penal institution, complete separation of facilities is required).

To the extent that the Regional Commissioner has specifically approved longer time limits than indicated above for a specific facility in a State prior to issuance of this memorandum such approval shall be honored, but in no case shall such approval apply to fiscal quarters beginning after issuance of this memorandum.

Issue #2

What is a single State agency (particularly with respect to umbrella agencies)?

Response

The single State agency is that agency so designated by the State in its State plan as approved by the Regional Commissioner, SRS. Therefore, the organizational components of a so-called umbrella agency, which is designated and approved as the single State agency are not required to comply with 45 CFR Parts 226, 220.61(c)(2) and 222.87(b) in their dealings with each other and in the provision of services. The umbrella

agency must, however, established procedures to meet all other requirements of Federal regulations. These procedures may take the form of agreements.

Issue #3

What are the criteria under which we determine whether services may be and are provided on a group basis?

Response

Services provided on a group basis can only be provided to persons who are members of groups designated in the State plan as an eligible group under 45 CFR 220.52(a)(3)(iv) or 45 CFR 222.55(a)(2)(iii). The services must be specified in the State plan and be available to all members of the group that request them. The services may be provided by the agency staff members or contracted for on a group basis. If the agency purchases or arranges for the service on an individual basis, or pays for each individual served, the service is not a group service and each recipient would have to qualify individually. Any service, including day care, may be provided on a group basis if the above criteria are met.

Issue #4

What are the criteria under which we determine that a plan provision is in operation?

1. Eligibility for services must be determined at, or prior to, the time of service delivery except in cases of emergency. Specifically regarding

retroactive claims, sampling techniques or any other method of reconstruction used to determine eligibility on a retrospective basis can not provide an allowable alternative to determining eligibility at, or prior to, the time of service delivery.

2. An individual service plan for each recipient of service provided on an individual basis must be developed and maintained on a current basis.

3. There must be a record that services were provided or arranged for pursuant to the individual service plan for services provided on an individual basis and conversely, a means of determining that the services provided were prescribed by the service plan.

4. An established and adequate system of accounting and costing must be in effect along with the maintenance of supporting fiscal records.

OFM in conjunction with regional financial staff will provide additional guidance as to the criteria for adequate system of accounting.

Regarding the determination of when the plan went into operation, if there are isolated breakdowns or exceptions in the implementation of the four items above, these may not preclude a finding that the plan was in operation. In uncertain cases, consult the Central Office.

Regardless of the time permitted for the development of a service plan under 45 CFR 220.16(b), in order for a State Plan to be in operation, services are to be provided or arranged for *pursuant* to an individual service plan for services provided on an individual basis. Furthermore, this must be documented, and there must be a means of determining that the services provided were prescribed by the service plan.

In applying these criteria to claims for Federal Financial participation it should be remembered that Federal Financial Participation may not be allowed until after the appropriate plan provision is approved as a part of the State Plan and then may be allowed only from the beginning of the calendar quarter in which approvable plan material was submitted or the date the plan provision was placed in operation on a statewide basis, whichever is later.

In the case of purchase of service, the purchase arrangement must have been placed in effect under a purchase of service agreement or other cooperative arrangement. This would usually mean that a written agreement between the single State agency and the provider had been executed. In the absence of a written agreement, there must be an adequate showing of an oral agreement which was valid under State law.

Issue #5

May any expenditures be claimed on a retroactive basis that have not been made

under conditions which meet the criteria for the plan being in operation, i.e.,

1. Is retroactive determination of eligibility allowable?

2. May individual service plans be constructed after the fact?

3. May arrangements for services pursuant to individual service plans be after the fact?

4. May accounting methods be constructed after the fact?

Response

1. No, but provision of service may be initiated prior to completion of the eligibility determination process in cases of emergency. In such cases, expenditures for services to ineligibles should not be claimed.

2. No

3. No

4. No, but correction of errors and revision of reported expenditures to reflect proper allocation of costs may result in adjustment of claims for prior periods.

Issue #6

Rates of Payment - 45 CFR 226.1(a)(7) provides that the State plan must provide for the establishment of rates of payment which "do not exceed the amounts reasonable and

necessary to assure quality of services, and in the case of services purchased from other public agencies are in accordance with the costs reasonably assignable to such services." How are these determinations to be made; when are they to be made and what documentation is necessary? Is sampling satisfactory in establishing these costs? If so, what are the parameters of the sampling?

Response

Rates of Payments - We assume general guidelines exist on quality of service such as qualified staff, reasonable caseloads, good supervision and management, etc. Some tests of the State agency activity to determine whether they were establishing reasonable rates of payment would be:

1. Purchase from private sector

a. Rates paid for eligibles should be no more than rate charged for ineligibles for comparable service;

b. Rates per work unit or costing methods should be negotiated based on a private agency budget and on equitable allocation of budgeted costs to eligibles together with an appropriate work unit if used; also compare rate with other private agencies;

c. A work unit is appropriate when the cost of providing that work unit does not vary significantly in most instances;

d. When unit cost or rates are used and billed based on budgeted costs, adjustments to actual should be made every six months;

e. Scientific sampling is a satisfactory method of determining costs of service, assuming the sample design will produce results with a confidence level of 95% plus or minus 1%;

f. A-87 principles for allocation of indirect costs to activities can be followed but the "allowability of costs" portion does not have to be met.

2. Purchases from public sector

The tests specified above for the private sector also apply to the public sector except that the public agency must fully comply with OMB Circular A-87.

Issue #7

45 CFR 226.1(a)(2) provides that the single State agency will retain continuing basic responsibility for determination as to the eligibility of individuals for services. The June 17, 1971, memorandum (page 6) provides that some of the functions of determining eligibility and developing individual service plans can be performed by the public agency providing the service. What documentation is required to establish that these functions have been performed adequately? Is sampling permissible? What are the parameters of the sampling?

Response

The single State agency retains responsibility for eligibility determination and development of individual service plans. This means that while the agency may delegate some functions of obtaining information and making decisions necessary for eligibility determination, it may not delegate the function of making the determination. Where a group has been determined to be eligible by the single State agency for services provided on a group basis the act of determining that persons receiving services are members of the group may be performed by the provider subject to monitoring by the single State agency. This monitoring function may be accomplished by sampling the effectiveness of the method of establishing membership in the group. If the method is found to be ineffective, corrective action must be taken.

Where eligibility is determined on an individual basis the single State agency must make that determination prior to or concurrent with the provision of service except in cases of emergency. In cases of emergency the single State agency must make the determination within thirty days of the date provision of service was initiated and must eliminate from claims for Federal Financial Participation all expenditures for services to persons determined to be ineligible. Where the determination is made on the basis of information furnished by the provider or the recipient, the single state agency must verify the information or

establish a system of quality control to insure that the incidence of incorrect determinations is not excessive. The single State agency may accept the decisions of the provider agency concerning elements of eligibility for which the provider agency has special professional competence and has examined evidence in accordance with criteria provided by the single State agency (e.g. determination of disability on the basis of medical evidence using established disability criteria).

The single State agency may delegate the entire function of development and maintenance of service plans only in those cases where all services required by the family (AFDC) or individual (adult programs) are to be provided or arranged by the agency to which the entire function is delegated. In all other cases, where functions of developing individual service plans have been delegated, the single State agency must review the service plan prior to or concurrent with the provision of services except in emergencies and determine that the plan is appropriate to the needs of the family or individual. In making this determination, the single State agency may accept the judgment of professional personnel with regard to the appropriateness of individual services. Whenever elements of the service plan for an individual or family are developed by more than one provider, these elements must be consolidated into a single service plan by the single State agency and reviewed and approved for appropriateness as a comprehensive plan for services to that

individual or family. This review must be conducted on a current basis.

The single State agency must monitor the accomplishment of the functions of plan development or maintenace performed by the provider to insure that all requirements of 45 CFR 220.16 and 45 CFR 222.22 are met. Sampling may be appropriate for the purpose, so long as corrective action is taken when excessive error rates are found.

/s/
John D. Twiname

EXHIBIT "A"

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
REGIONAL OFFICE
1114 COMMERCE STREET
DALLAS, TEXAS 75202

Social and Rehabilitation
Service
RECEIVED
JAN 23 1973
State Department of Public
Welfare
Office of Commissioner

January 19, 1973

Mr. Raymond W. Vowell, Commissioner
Texas State Department of Public Welfare
John H. Reagan Building
Austin, Texas 78701

Dear Mr. Vowell:

We have reviewed your expenditure report and supporting documentation for the quarter ending June 30, 1972, in which the State makes a claim in the amount of $92,731,245 for retroactive social service expenditures during the period July 1, 1971, through March 31, 1972.

It will be necessary to adjust the fourth quarter expenditure report for FY 1972 to delete the $92,731,245 from federal financial participation (line 13 of SRS OA 41). The reasons for this disallowance were specifically stated in the interpretations to the social service cost issues memorandum dated December 20, 1972, from the SRS Administrator. We submitted this memorandum to you on January 2, 1973. The more important reasons applicable to the disallowance are specified as follows:

(1) During the period in question (July 1, 1971, to March 31, 1972) eligibility for services was not determined at, or prior to, the time of service delivery.

(2) An individual service plan for each recipient was not developed and maintained on a current basis. Service plans were developed concurrently with eligibility determinations. In fact, a common form was used both to determine eligibility and as a service plan. Since information to complete this form was gathered through a contract with Peat, Marwick, Mitchell and Company signed July 26, 1972, there is no question that such information was developed after the fact.

(3) Since there were no current individual service plans, there were no records of services provided pursuant to such plans. Records of services provided were also developed by Peat, Marwick, Mitchell and Company as part of the cost accounting. These records were developed at the same time as recipient eligibility and individual service plans.

(4) Accounting and costing systems were constructed after the fact and were not in effect at the time the services were provided. This is evidenced by the fact that costing was not possible until after eligibility determinations were done and records of services were developed. On August 3, 1972, we met with representatives of Peat, Marwick, Mitchell and Company to discuss methodology to document the retroactive claim. A manual was developed describing the procedures and methods to be followed in accumulating the costs of services. This manual was completed on August 18, 1972. On June 9, 1972, we received a revised estimate of expenditures for the retroactive period in the amount of $95 million. This estimate was

revised considerably by the State after documentation of costs was completed which is further evidence that costing was constructed after the fact.

Thus, it will now be necessary for the State to submit a revised expenditure report for the period ending June 30, 1972, giving effect to the reduction in federal financial participation of $92,731,245.

Sincerely yours,

/s/
Clarence M. Lambright
Regional Commissioner

TEXAS DEPARTMENT OF PUBLIC WELFARE

STATE PLAN

SERVICES TO FAMILIES AND CHILDREN

Title IV-A and B,
SOCIAL SECURITY ACT

Austin, Texas *April 30, 1969*

3.2 Service Plan — Regulation 220.16

(a) A service plan will be developed and maintained on a continuing basis for each family and child who requires service in accordance with all the conditions as specified in the Regulation.

(b) The social data and services are reported by appropriate staff member to the Automatic Data Processing System. From this, notifications are sent to workers and supervisors to assure review of the plan at least annually. It is the responsibility of workers and supervisors to assess the continued suitability of service plans and to make changes, as appropriate, from on-going work with clients.

3.2
Effective 4-30-69

STATE PLAN FOR TITLE I, X, XIV OR XVI
OF THE SOCIAL SECURITY ACT
SERVICE PROGRAMS FOR AGED, BLIND, OR
DISABLED PERSONS

STATE Texas

The State Department of Public Welfare
(name of single State agency)

submits herewith the State plan provisions with respect to the service programs checked below and hereby agrees to administer the programs in accordance with the provisions of the State plan, the Act, and all related regulations and policies.

PROGRAMS COVERED

Services (50 Percent Federal Financial Participation)	Services (75 Percent Federal Financial Participation)
☐ Title I	☒ Title I
☐ Title X	☒ Title X
☐ Title XIV	☒ Title XIV
☐ Title XVI	☐ Title XVI

The Texas State Department of Public Welfare
(name of single State agency)
certifies as follows:

SECTION I MANDATORY PROVISIONS FOR ALL SERVICE PROGRAMS

Regulations

222.1 1. Services Provided, Groups Covered, and Other Provisions

(a) The State agency will make services available to all current applicants and recipients of financial assistance. Attachment 1A describes the services provided.

222.22 16. Individual Service Plans

For each individual receiving services, a service plan will be developed, implemented, reviewed, and recorded in accordance with the conditions specified in 45 CFR 222.22.

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
SOCIAL AND REHABILITATION SERVICE
WASHINGTON, D.C. 20201

Submit 6 Copies

TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL
SOCIAL AND REHABILITATION SERVICE STATE PLAN PROGRAMS

TO REGIONAL COMMISSIONER SOCIAL AND REHABILITATION SERVICE DEPARTMENT OF HEALTH, EDUCATION, & WELFARE	TRANSMITTAL NUMBER 71-45

I PROGRAM IDENTIFICATION (Same identification as title page of preprinted plan)
Services to Families and Children, Title IV-A and B

II TYPE OF ACTION SUBMITTED FOR APPROVAL (Check one and enter effective date)

☐ NEW STATE PLAN ☒ AMENDMENT	EFFECTIVE DATE ➡	July 1, 1971

COMPLETE REMAINDER OF PART II IF THIS IS AN AMENDMENT (Separate transmittal for each amendment)

FEDERAL REGULATION CITATION
SRS Program Regulation 220.52

NUMBER OF THE PLAN SECTION OR ATTACHMENT	NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT
6.3	6.3

SUBJECT OF AMENDMENT
6.3 - Provides optional groups to be served.

III GOVERNOR'S REVIEW (Check one)

☒ GOVERNOR'S OFFICE REPORTED NO COMMENT

☐ COMMENTS OF GOVERNOR'S OFFICE ENCLOSED

☐ NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL TO GOVERNOR'S OFFICE

SIGNATURE OF STATE AGENCY OFFICIAL R W Vowell	REPORT OF SRS APPROVAL DATE RECEIVED IN REGIONAL OFFICE: August 12, 1971 — REGION: VI
TITLE Commissioner	Plan approved - one copy attached
DATE July 30, 1971	SIGNATURE OF REGIONAL OFFICIAL Clarence Ambright
RETURN TO: (Name and Address of State Agency) State Department Of Public Welfare John H. Reagan Building Austin, Texas 78701	TITLE Regional Commissioner S[illegible] — DATE: August 17, 1971
	REMARKS

SRS - OPC - 11 (MAY, 1970)

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE
SOCIAL AND REHABILITATION SERVICE
WASHINGTON, D.C. 20201

Submit 6 Copies

TRANSMITTAL AND NOTICE OF APPROVAL OF STATE PLAN MATERIAL SOCIAL AND REHABILITATION SERVICE STATE PLAN PROGRAMS

TO: REGIONAL COMMISSIONER SOCIAL AND REHABILITATION SERVICE DEPARTMENT OF HEALTH, EDUCATION, & WELFARE	TRANSMITTAL NUMBER 71-43

I PROGRAM IDENTIFICATION (Same identification as title page of preprinted plan) State Plan for Title I, X, XIV or XVI of the Social Security Act Service Programs for Aged, Blind, or Disabled Persons

II TYPE OF ACTION SUBMITTED FOR APPROVAL (Check one and enter effective date)

☒ NEW STATE PLAN ☐ AMENDMENT	EFFECTIVE DATE ⇨	July 1, 1971

COMPLETE REMAINDER OF PART II IF THIS IS AN AMENDMENT (Separate transmittal for each amendment)

FEDERAL REGULATION CITATION Code of Federal Regulations, Title 45 - Public Welfare - Chapter II Social and Rehabilitation Service - Part 222, Service Programs for Aged, Blind or Disabled Persons: Titles I, X, XIV - Social Security Act

NUMBER OF THE PLAN SECTION OR ATTACHMENT	NUMBER OF THE SUPERSEDED PLAN SECTION OR ATTACHMENT

SUBJECT OF AMENDMENT

III GOVERNOR'S REVIEW (Check one)

☐ GOVERNOR'S OFFICE REPORTED NO COMMENT

☒ COMMENTS OF GOVERNOR'S OFFICE ENCLOSED

☐ NO REPLY RECEIVED WITHIN 45 DAYS OF SUBMITTAL TO GOVERNOR'S OFFICE

SIGNATURE OF STATE AGENCY OFFICIAL [signature]	REPORT OF SRS APPROVAL DATE RECEIVED IN REGIONAL OFFICE: AUG 17 1971 — REGION: VI
TITLE Commissioner	Plan approved – one copy attached
DATE July 1, 1971	SIGNATURE OF REGIONAL OFFICIAL [signature] Clarence M. Lambright
RETURN TO: (Name and Address of State Agency) Texas State Department of Public Welfare John.H. Reagan Building Austin, Texas 78701	TITLE: Regional Commissioner — DATE: 8/18/71 REMARKS: 329

SRS – OPC – 11 (MAY, 1970)

No. 77-1858

In the Supreme Court of the United States

OCTOBER TERM, 1978

DEPARTMENT OF HUMAN RESOURCES OF THE STATE OF TEXAS, PETITIONER

v.

JOSEPH A. CALIFANO, SECRETARY OF HEALTH, EDUCATION, AND WELFARE, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

WADE H. MCCREE, JR.,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

In the Supreme Court of the United States

OCTOBER TERM, 1978

No. 77-1181

DEPARTMENT OF HUMAN RESOURCES OF THE STATE OF TEXAS, PETITIONER

v.

JOSEPH A. CALIFANO, SECRETARY OF HEALTH, EDUCATION, AND WELFARE, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

This case concerns a dispute arising under provisions of the Social Security Act that provide matching funds to states that have submitted plans to the Secretary of Health, Education, and Welfare providing for social services to the aged, blind and disabled. Petitioner submitted such a plan to the Secretary, who approved it (Pet. App. A-5). The Secretary later concluded that certain services provided by petitioner were not authorized by the plan, and he accordingly declined to reimburse petitioner for the approximately $92 million expended for these services (*id.* at A-9).

Petitioner then filed this suit, contending that the Secretary erred in failing to afford an evidentiary hearing

and that the $92 million should be paid pending the hearing. The district court ordered the Secretary to provide petitioner with a hearing, but it declined to order that the funds be paid to petitioner in the interim (388 F. Supp. 1304; Pet. App. A-15 to A-25). Both parties appealed, and the court of appeals substantially affirmed the district court's decision (556 F. 2d 326; Pet. App. A-1 to A-14).

Congress now has enacted legislation that terminates the dispute between the parties. Pub. L. 95-291, 92 Stat. 304 authorizes the payment of funds to settle this and similar claims asserted by the states involved.[1] Although this case would not become moot until the funds have been appropriated and paid,[2] the new legislation deprives this case of any prospective significance it may once have had. Accordingly, we respectfully submit that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.,
Solicitor General.

JULY 1978.

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[1]Pub. L. 95-291 is reprinted as an appendix to this memorandum.

[2]We expect the case to become moot before the end of the year. The Senate has passed a bill (H.R. 12930, 95th Cong., 2d Sess. (1978), the Treasury, Postal Service, and General Governmental Appropriations bill) that appropriates the monies necessary to carry out Pub. L. 95-291. See 124 Cong. Rec. S9888 (daily ed., June 27, 1978). The House version of this appropriations bill was passed before the President has signed Pub. L. 95-291, and it therefore does not contain funds for the new statute. 124 Cong. Rec. H5097 (daily ed. June 7, 1978). The appropriations measure now is being considered by a conference committee, and we are informed that the appropriations necessary to carry out Pub. L. 95-291 are expected to be included. The new statute then requires payments to be certified and made expeditiously.

DOJ-1978-07

APPENDIX

Ninety-fifth Congress of
the United States of America

AT THE SECOND SESSION

Begun and held at the City of Washington on
Thursday, the nineteenth day of January,
one thousand nine hundred and seventy-eight

AN ACT

To authorize an appropriation to reimburse certain expenditures for social services provided by the States prior to October 1, 1975, under titles I, IV-A, VI, X, XIV, and XVI of the Social Security Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) there is authorized to be appropriated for the fiscal year which ends on September 30, 1979, not to exceed $543,000,000, to remain available until expended, to enable the Secretary of the Treasury to pay to any State the amount determined by the Secretary of Health, Education, and Welfare (hereinafter in this Act referred to as the "Secretary"), in accordance with the succeeding provisions of this Act, to be payable to the State in settlement of the unpaid claim of the State against the United States for reimbursement of expenditures made by the State prior to October 1, 1975, with respect to services (and related administrative costs) which the State asserts were provided (or incurred) under an approved State plan pursuant to title I, IV-A, VI, X, XIV, or XVI of the Social Security Act.

(b) For purposes of this Act, the term "unpaid claim" of any State means (subject to the succeeding sentence) the total amount of Federal reimbursement for expenditures of the type specified in subsection (a) which has not been paid to such State prior to the date of

enactment of this Act. In determining such total amount in the case of any State, any portion thereof attributable to expenditures made in any fiscal year with respect to which the provisions of section 1130 of the Social Security Act (as then in effect) were applicable shall be reduced (but not below zero) by the excess (if any) of (1) the aggregate of the portion of such total amount attributable to expenditures made in such year and the total amount of the Federal reimbursement paid prior to the date of enactment of this Act to such State with respect to expenditures made in such year, over (2) the State's allotment determined under such section 1130 for such year.

SEC. 2. (a) In the case of that portion of the unpaid claim of a State that the Secretary determines was asserted against the United States, in the form and manner prescribed by the Secretary with respect to the filing of claims under titles I, IV-A, VI, X, XIV, and XVI of the Social Security Act, prior to April 1, 1977, the Secretary shall certify to the Secretary of the Treasury for payments to the State the sum of—

(1) an amount equal to 38 percent of so much of such portion as does not exceed $50,000,000;

(2) an amount equal to 35 percent of so much of such portion as exceeds $50,000,000 but does not exceed $150,000,000; and

(3) an amount equal to 21 percent of so much of such portion as exceeds $150,000,000;

except that the percentage specified in paragraph (1) shall be 58 percent and the percentage specified in paragraph (2) shall be 50 percent in the case of a State if the portion of the unpaid claim of such State referred to in the preceding provisions of this subsection equals or exceeds 85 percent of the sum of (A) such portion and (B) the

total amount of Federal reimbursement for expenditures of the type specified in the first section of this Act which has been paid to such State prior to the date of enactment of this Act but with respect to which formal steps have been initiated by the Secretary to recover such reimbursement.

(b)(1) In the case of the portion of the unpaid claims of a State that the Secretary determines meets the requirements of subsection (a), except that the claim was asserted, in the form and manner prescribed by the Secretary, on or after April 1, 1977, but prior to the ninety-first day following the date upon which this Act is enacted, the Secretary shall certify to the Secretary of the Treasury for payment to the State, subject to paragraph (2), an amount equal to 15 percent of so much of such portion as he finds to be for the provision of services that he finds the State provided and for which he has not provided reimbursement, but the expenditures for which were reimbursable under title I, IV-A, VI, X, XIV, or XVI of the Social Security Act prior to April 1, 1977, or, if not services the expenditures for which were reimbursable, are services of a similar kind and are not otherwise reimbursable under this Act.

(2) The secretary may not certify for payment to any State under the authority of this subsection an aggregate amount that exceeds 5 percent of that State's allotment for the fiscal year 1973 of social service funds under titles I, IV-A, X, XIV, and XVI of the Social Security Act, as determined in accordance with section 1130(b) of such Act, less the amount certified for payment to the State under subsection (a) of this section.

(3) The Secretary shall have no authority, by regulations or otherwise, to extend the time period specified in paragraph (1) or to waive the time limit for assertion of a claim.

SEC. 3. (a) Except with respect to amounts paid by the Secretary to a State prior to April 1, 1977, no State is entitled to reimbursement of expenditures described by

the first section of this Act, except as provided by this Act.

(b) Neither the Secretary nor any other official of the Federal Government may seek to recover any amount paid to a State prior to April 1, 1977, or pursuant to this Act, as reimbursement of expenditures made by the State of the type described by the first section of this Act.

SEC. 4. (a) The Secretary is authorized to enter into agreements with any State in accordance with the provisions of this Act, and agreements entered into prior to the enactment of this Act, to the extent not inconsistent with the terms hereof, shall have the same force and effect as agreements entered into subsequent to enactment of this Act.

(b) In the absence of an agreement, a State dissatisfied with a determination by the Secretary under this Act may, by application to the Secretary within 60 days after the date of notice to the State of that determination, obtain the Secretary's review of that determination. If the application requests a hearing, the Secretary shall conduct a hearing after reasonable notice to the State, and shall, on the basis of evidence adduced at the hearing, affirm, modify, or reverse his determination. If the Secretary does not preside at the reception of the evidence at the hearing, the decision of the presiding official or body shall be the decision of the Secretary.

(c) No court of the United States has jurisdiction to entertain any action seeking the review of any determination or finding of the Secretary under this Act, or otherwise seeking to compel a determination by the Secretary to certify for payment any claim described by the first section of this Act; except that the appropriate district court shall have jurisdiction over any action seeking enforcement of an agreement of the kind referred to in subsection (a).

SEC. 5. (a) Amounts appropriated under the first section of this Act shall be first applied in settlement of the portions of unpaid claims described in section 2(a). If, after that payment, the amounts remaining are insufficient to pay the amounts established by section 2(b) with respect to the portions of unpaid claims asserted under section 2(b), the Secretary shall certify for payment with respect to each such portion an amount that bears the same relationship to that portion as the total of such remaining available amounts bears to the total of all portions of unpaid claims asserted under section 2(b).

(b) A reduction effected by subsection (a) of this section in the amount payable to a State under section 2(b) does not give rise to an entitlement of the State to the difference between the amount payable under section 2(b) (without regard to subsection (a) of this section) and the amount payable under section 2(b) after application of subsection (a) of this section.

(c) In the event that the amount appropriated pursuant to the first section of this Act exceeds the payable portions of unpaid claims under subsections (a) and (b) of section 2, the amount paid to any State receiving a payment computed with respect to paragraph (3) of section 2(a) shall be increased (to the extent of such excess) by an amount equal to the difference between the amount it received under section 2(a) and the amount it would have so received if the percentage in such paragraph had been 25 percent.

SEC. 6. The Secretary of the Treasury shall pay to each State, out of amounts appropriated pursuant to the first section of this Act, all amounts certified by the Secretary as payable to that State under the terms of this Act.